

The background of the entire page is a composite image. On the left, there is a close-up of the Statue of Liberty's face and crown, rendered in a light blue and green color scheme. On the right, there is a close-up of a ballot box with the word "BALLOT" printed vertically in blue capital letters. A red checkmark is visible on the ballot box. The text "REVITALIZING OUR NATION'S ELECTION SYSTEM" is overlaid on the top right portion of the image.

# REVITALIZING OUR NATION'S ELECTION SYSTEM

Democratic Caucus  
Special Committee on Election Reform

**Democratic Caucus**  
***Special Committee on Election Reform***

**Maxine Waters, California**

*Chair, Democratic Caucus  
Special Committee on Election Reform*

**Richard A. Gephardt, Missouri**

*House Democratic Leader*

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**Jan Schakowsky, Illinois**

*Vice Chair*

Stephen J. Kaufman

*Counsel to the Committee*

## *A Note from the Chair*

# **Making Every Vote Count!**

In the days and weeks following the 2000 presidential election, I watched along with other Americans as the outcome of the election was decided by election boards and by the courts. I never could have imagined that the results of our presidential election would be decided by judges, rather than voters. Yet despite the political and legal maneuvering and despite the disappointment and anger of many American citizens, the President was sworn into office and there was an orderly transfer of power. Democracy withstood the test of highly controversial and divisive election practices and procedures.

Clearly, however, there is work to be done. The right to vote is a cornerstone of our democracy. And, as last fall's presidential election showed, many citizens are being denied their right to fully participate in our election process.

When House Minority Leader Richard Gephardt formed the Democratic Caucus Special Committee on Election Reform, I jumped at the opportunity to serve as its Chair. As an advocate for civil rights, I welcomed the chance to lead the effort on the first major civil rights issue of the Twenty-first Century – election reform. I thank Leader Gephardt for creating a vehicle to study this important issue and for giving me the opportunity to Chair this Committee.

For over six months, our Committee traveled across the Nation to hear from election experts and voters about what is both right and wrong with American elections. I have enjoyed this opportunity tremendously, and have been overwhelmed by the outpouring of interest and support from the Nation's voters. This report reflects their experiences and opinions.

A special thanks to all the Vice-Chairs and Members of Congress and their staffs for hosting Committee meetings in their congressional districts. Several other Members of Congress who were not on the Committee displayed their interest in the issue by attending the hearings on their own. I also thank state and local elected officials, organized labor, civil rights groups, business representatives, grassroots activists, the clergy and academicians for their participation.

I would like to extend my appreciation to the court reporters, photographers and camera operators who recorded each hearing so that a thorough record of the proceedings would be available. Additionally, I thank the Committee Counsel, Stephen J. Kaufman, and his staff for their dedication, legal expertise and advice.

There is a great deal of work to be done in reforming our Nation's election system, and this report provides this Committee's recommendations for bringing our elections into the Twenty-first Century. Now Congress must roll up its sleeves and get to work on this very important issue.

A handwritten signature in black ink, reading "Maxine Waters". The signature is written in a cursive, flowing style with a large initial "M".

U.S. Congresswoman Maxine Waters, Chair

## *Table of Contents*

9	Executive Summary
11	Summary of Recommendations
17	Revitalizing our Nation's Election System
19	About the Special Committee
23	A Blueprint for National Reforms

### The Federal Government's Role in America's Elections

27	Uniform Voting Standards
31	Federal Funding and Oversight

### The Mechanics of Voting in America's Elections

37	Voter Registration
41	Purging
44	Provisional Ballots
48	Bilingual Voters
50	Voter Education

### How America Votes

57	Voting Equipment
66	Disabled Voters
71	Absentee Voting
74	Felon Disenfranchisement
77	Military Voting
81	Alternative Voting Methods

### The Polling Place Experience

89	Polling Place Facilities
94	Poll Workers
100	Voter Intimidation
103	Voter Identification
105	Ballot and Voting Equipment Design

### Reporting Election Results

111	Impartial Election Officials
113	Counting the Votes
117	The Role of the Media in Elections

120	End Notes
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## *Executive Summary*

The 2000 presidential election served as a wake-up call to all of us. Prior to the events in Florida last fall, we could not have imagined that our Nation's election system was in such disrepair. While some of the reported incidents in Florida were unique to that state's election, we now know that many of these issues arise in jurisdictions all over America.

In the aftermath of the 2000 presidential election, the House Democratic Caucus formed this Special Committee on Election Reform to address the problems with our Nation's election process. In February 2001, House Democratic Leader Richard Gephardt appointed the members of this Committee and its Chair, Representative Maxine Waters (CA-35), to tackle the difficult issue of election reform on behalf of the American People. The Vice-Chairs of this Committee include the ranking Democrats on the House Committee on the Judiciary and the House Administration Committee, Representatives John Conyers, Jr., and Steny Hoyer, respectively. These two House committees are vested with the authority to consider legislation effecting changes to our election process.

From the beginning, our stated goal has been to ensure the integrity of the election process while increasing voter confidence and participation.

Following its formation, the Committee conducted a series of public hearings around the Country designed to educate and inform us in developing solutions to repair our broken system. In all, the Committee held a total of six public hearings in: Philadelphia, San Antonio, Chicago, Jacksonville, Cleveland and Los Angeles. At these hearings, we heard from election experts, representatives from the NAACP, ACLU, and other Civil Rights organizations, state and local election officials, poll workers, representatives of the disability community, experts on ballot design, military voting officials and, most importantly, voters.

This report is the culmination of six months of intense study on the issue of election reform. In reaching our findings and recommendations, we relied on testimony from our hearings, reports and studies issued by other organizations, as well as independent research conducted by our staff.

In conducting this review of our election system, we were struck by the lack of attention given to the system prior to the November elections. Government, it seems, has abdicated its responsibilities when it comes to conducting elections.

We cannot sit back and continue to let this happen while millions of voters are being disenfranchised at the polls. We must invest in the system or it will continue to fail our democracy.

Government has the responsibility for ensuring that its citizens have the necessary tools and information to elect their representatives, and that election officials have the resources to conduct elections. This report provides a blueprint for modernizing our election system, professionalizing the way our system is run, and allocating the resources necessary to implement that system. There are many fine bills that already have been introduced in Congress. But these bills only serve

as the starting point. This report proposes additional measures to support and supplement those bills, identifies key areas where minimum national standards are appropriate, and recommends changes at the state and local levels. Certain fundamental reforms must be required in federal elections to ensure that all eligible voters are afforded the opportunity to cast their ballots and have their votes properly counted.

We believe the findings set forth in this report will go a long way toward ensuring the integrity of the election process, increasing voter participation and restoring the confidence of the American People.

## ***Summary of Recommendations***

### **Minimum national standards must be adopted for use in federal elections**

The following requirements must be followed by each state in conducting Federal elections:

- ▶ States must create and maintain statewide voter registration databases that are accessible by election workers at the polls on Election Day;
- ▶ Voters may not be purged from the voting rolls due to mere inactivity or the failure to respond to a notification from election officials;
- ▶ States must offer provisional ballots at the polling place to any voter whose name does not appear on the roster of eligible voters or who encounters a problem regarding eligibility at the polling place and believes he or she is entitled to vote;
- ▶ Jurisdictions that serve qualified language minority groups under the Voting Rights Act must provide bilingual voting materials for all aspects of elections;
- ▶ Sample ballots and voting information, including details on the voter's polling location, instructions on voting equipment and a statement of voting rights, must be mailed to every registered voter in advance of the election;
- ▶ Voting systems must contain error detection devices at the precinct so voters can correct any errors before their ballots are cast and counted;
- ▶ Polling places and voting equipment must be fully accessible to elderly voters, voters with physical disabilities and visually impaired and blind voters. These voters must be afforded the opportunity to cast a secret ballot at the polls; and
- ▶ Absentee ballots must be made available to any voter who wishes to vote by absentee.

### **The Federal government should provide funding and oversight of federal elections**

The federal government should immediately provide funding to enable states and local jurisdictions to upgrade their voting systems and abide by the proposed minimum national standards by the 2004 elections. The federal government should work with the states to oversee the implementation of national standards, conduct research and testing of new technologies, assist states with voter education and registration efforts, develop criteria for poll worker training, study and report on state compliance with federal laws, and ensure that our election system remains current. In addition to retaining its existing enforcement authority, the Department of Justice should assume additional responsibility for assuring that minimum national standards are implemented by the states.



**Efforts must be taken to register all eligible voters, and to ensure names have not been improperly removed from the registration lists**

Stronger enforcement of the National Voter Registration Act must be provided by the U.S. Department of Justice. Citizens who register through government agencies under NVRA should be given a receipt with a unique number to prove that they, in fact, registered to vote. Voter registration databases should be accessible at each precinct to resolve voter registration issues at the polling place.

States should increase efforts to make voter registration easier, including shortening registration periods or providing for same day registration.

Guidelines must be developed on the removal of names from registration rolls. Removal from voter lists should require some affirmative act on the part of the voter.

**Provisional ballots must be offered to voters whose names do not appear on the precinct roster**

States must offer provisional ballots at the polling place to any voter whose name does not appear on the roster of eligible voters or who encounters a problem regarding eligibility at the polling place and believes he or she is entitled to vote. If the voter casts a ballot in a precinct other than his or her own, election officials should count the votes for those candidates or measures for which the voter would have been eligible to vote in his or her correct precinct.

**Voting materials must be printed in languages other than English where necessary**

Bilingual ballots, sample ballots, voting instructions, bilingual poll workers and other voting materials must be made available to voters of certain language minority groups in jurisdictions covered by the Voting Rights Act of 1965.

**Voter education efforts must be increased, especially targeted to new voters**

Sample ballots and voting information must be mailed to every registered voter for each federal election. Sample ballots shall include the name and address of the voter's polling place, the date of the election and the hours the polling place will be open, instructions on how to vote using the equipment employed in that jurisdiction, information on voting rights under federal and state laws, information on the right to request a provisional ballot if an issue arises at the polling place, and contact information if the voter needs to talk to election officials on Election Day.

State and local election officials are encouraged to develop aggressive voter education programs which should target young people, new citizens and other first-time voters. Programs should be set up with schools to educate students about voting systems and provide demonstrations of voting equipment. Information booths should also be set up in public places, such as shopping malls,

supermarkets and post offices, so voters can ask questions and practice voting prior to Election Day.

### **Voting equipment must be brought into the 21<sup>st</sup> Century**

Funding must be provided to the states and local governments for the purpose of upgrading voting technology to systems which meet the above criteria. The Committee does not endorse any one voting system as we recognize that the selection of voting equipment should be left up to those who will be using the system and are in the best position to evaluate their needs and financial considerations. The responsible federal authority should have responsibility for testing and certifying new voting equipment.

### **Election Day activities must be accessible to disabled voters**

Disability laws must be strengthened, including the definition of terms in the Voter Accessibility for the Elderly and Handicapped Act and the Americans with Disabilities Act. Enforcement of the NVRA, especially in the area of agency-based registration assistance, also must be tightened.

Technologies that are sensitive to the needs of voters with physical disabilities and visual impairments, and provide features enabling these voters to cast a secret ballot, must be developed.

The Federal government should provide funding to support a comprehensive study, which has the support of the disability community, of nationwide polling places to determine their accessibility to voters with special needs. Based on this study, the Federal government should work with states and the disability community to develop compliance standards for polling places in each state.

### **Absentee voting should be embraced**

Absentee ballots must be made available to any voter who wishes to vote by absentee in a federal election. Local election officials should provide secure drop boxes at public locations that are accessible to disabled voters for the return of absentee ballots. The federal government should adopt a special class of postage to facilitate the return of absentee ballot applications and absentee ballots.

### **The voting rights of ex-felons should be restored**

Ex-felons should be eligible to vote once they have completed their sentences, including any term of parole and probation. States should develop a procedure for restoring the voting rights of ex-felons by a simple notification and re-registration process that should become a part of all release procedures, with election officials, prison officials and parole boards working together to develop these programs.

### **Military and overseas voting must be simplified and uniform**

The return of absentee ballots by overseas uniformed personnel and citizens should be standardized to facilitate voting by these voters. This standardization should include postmark requirements, method of return, signature requirements and submission deadlines. Overseas voters should be allowed to request absentee ballots for both the primary and general elections at one time, and states should automatically send absentee ballots to those voters for the general election after receiving this notification. Notary requirements should be eliminated, as should the “Not Earlier Than” requirement. The Federal Write-In Absentee Ballots should be accepted for all elections.

#### **Americans should be given time off to vote**

Congress should enact legislation providing federal employees with up to two hours of time off with pay to vote in federal elections. States should adopt similar laws allowing public and private employees to receive time off with pay to vote.

#### **Election officials should use a new approach to selecting polling places**

Polling places should be centrally located, easily accessible to elderly and disabled voters, located near public transportation, built with adequate parking, and convenient to people heading to and from work or school. Local jurisdictions should work with the business community to house polling places in permanent locations that meet the aforementioned criteria. Private residences should be avoided where possible. Polling places should be equipped with modern communication devices so that problems which inevitably arise at the polls can be dealt with swiftly. All polling places should have phone lines or cell phones and laptop computers with voter registration databases or internet access to centralized voter registration databases.

#### **Poll workers must be better trained and better paid**

Poll worker training should be mandatory at least every two years. Poll workers should be adequately compensated for attending these training sessions.

Congress should enact legislation giving federal employees Election Day off, without loss of pay or vacation time, to serve as poll workers. States and localities should consider adopting similar programs for state, county and city employees.

State and local governments are also encouraged to work with local businesses and labor to develop a poll worker program for private sector employees. High school and college students should be recruited as poll workers, offering them extra credit or even making service a requirement.

Each polling place should have a “professional” poll worker on Election Day. This person would be a full-time county or city employee who receives leave from his or her job each Election Day to serve as supervisor of a polling place.

Poll worker compensation should be increased. Additionally, poll workers should work in two seven to eight hour shifts, rather than one 12-15 hour shift.

### **Voter intimidation has no place in the election process**

The Department of Justice must be more active in ferreting out violations of the Voting Rights Act and enforcing its terms. The Department should allocate the resources necessary to respond to voter complaints, and place observers in jurisdictions where complaints have been received. State and local election officials should be diligent in responding to voter reports about intimidation at the polls and complaints about abusive or incompetent poll workers. Police check points should be prohibited on Election Day, and uniformed law enforcement personnel should not be allowed to linger at the polling place unless they are voting.

### **Voter identification requirements must not be abused**

Federal, state and local prosecutorial agencies must ensure that election officials and poll workers apply voter identification requirements equally in conformance with the Voting Rights Act. States and local jurisdictions may not require more than one form of identification from voters. The identification required must be readily available to all voters – driver's licenses and passports may not be the only two forms of photo identification that are accepted. Social security cards should not be required, although they may be one of many forms of acceptable identification.

### **Election officials should be impartial**

States and localities must recognize the importance of maintaining fairness and impartiality in the election system. To that end, state and local election officials should be selected on a non-partisan basis or in a way that ensures bipartisan checks and balances. Election officials should be forbidden from publicly supporting or campaigning for candidates for public office.

### **Count and recount laws must be consistent**

Vote counting procedures should respect the intent of the voter. At the same time, states must adopt statewide guidelines that ensure a consistent result and give the public assurance that the vote tabulation process is being conducted in a fair and impartial manner. The deadline for certifying statewide election results should be a minimum of 14 days after the election to allow for a complete and orderly review of all ballots, including a mandatory manual check of a random sample of precincts within each county to verify that the vote tabulation machines were operating correctly on election night.

The deadline for requesting recounts should not begin until after certification takes place. States should conduct automatic machine recounts if the election night vote differential is less than an amount to be determined by each state based on voting patterns and voting equipment. The right to a manual recount should be automatic upon request as long as the requestor is required to pay for the recount.

### **Network election night coverage must not interfere with the election process**

Network news organizations should voluntarily refrain from making projections in presidential elections until the polls have closed in the Pacific Time Zone (8:00 p.m. Pacific, 11:00 p.m. Eastern). If network news organizations refuse to act voluntarily, Congress should consider legislation in conjunction with the states prohibiting the release of election night results in federal elections to members of the media until 8:00 p.m. Pacific, 11:00 p.m. Eastern. Such restrictions may not single out the networks, but must prohibit the release of such information to anyone, as long as the public's right to an open and transparent vote counting process is protected.

# REVITALIZING OUR NATION'S ELECTION SYSTEM



Voter Testifying  
Chicago



Congressman  
Steny Hoyer  
Vice Chair



Congresswoman  
Maxine Waters  
Chair



Democratic Leader Richard Gephardt  
Vice Chair



Congressman  
Alcee Hastings  
Vice Chair

**MAKING EVERY VOTE COUNT**  
DEMOCRATIC CAUCUS SPECIAL COMMITTEE ON ELECTION REFORM

# REVITALIZING OUR NATION'S ELECTION SYSTEM

“ We have to make elections work. Too many Americans have given their lives in civil rights, in voting rights, in order to back up on this promise. We need to make sure that every vote cast is properly and accurately counted so that people will be willing to participate in our elections in the future.

America is the cradle of democracy. We are the oldest democracy in the world. We are the greatest democracy in the history of the world. The rest of the world looks to us as a model of how to run elections.

We must reassure people that their vote will count. We've got to revive and restore the democracy of the greatest country in the world. ”

— Democratic Leader Richard A. Gephardt



First-time voter testifying on experience in Chicago



The Honorable John Street  
Mayor of Philadelphia

**MAKING EVERY VOTE COUNT**  
DEMOCRATIC CAUCUS SPECIAL COMMITTEE ON ELECTION REFORM



# REVITALIZING OUR NATION'S ELECTION SYSTEM



Mike Kreloff, Policy Director  
Office of Cook Co. Clerk  
Chicago



Voters testifying, Los Angeles



Congresswoman  
Jan Schakowsky  
Vice Chair

**MAKING EVERY VOTE COUNT**  
DEMOCRATIC CAUCUS SPECIAL COMMITTEE ON ELECTION REFORM



# REVITALIZING OUR NATION'S ELECTION SYSTEM

“We know from studying this issue that the problems in our election system are not limited to Florida. Nor are they limited to the South, where racial barriers to voting still exist, or to the East, where antiquated voting equipment is still used. This is a nationwide problem which requires a nationwide solution.”

— **Congresswoman Maxine Waters, Chair**  
Democratic Caucus Special Committee on Election Reform



Congressman  
Charles Gonzalez  
Vice Chair



Voter Testifying  
Jacksonville



Phillip Zelikow  
National Commission  
on Federal Election Reform  
San Antonio

**MAKING EVERY VOTE COUNT**  
DEMOCRATIC CAUCUS SPECIAL COMMITTEE ON ELECTION REFORM

## **Revitalizing Our Nation's Election System**

The 2000 presidential election served as a wake-up call to all of us. For an agonizing thirty-seven days in November and December of 2000, the American People watched with amazement as the votes of thousands of Florida citizens were debated on television sets across the Country. No one could have imagined that our Nation's election system was in such disrepair.

The November 2000 elections are now behind us, but the lessons of Florida remain. Last year's election revealed shortcomings in our election system that must be repaired so voters do not lose confidence in our electoral process.

The events in Florida highlighted these shortcomings on a national stage for the first time. However, while some of what occurred in Florida was unique, many of the deficiencies we learned about occur on a regular basis in other jurisdictions. Problems at the polls and mechanical glitches inevitably and routinely arise on Election Day. In many instances, voters are improperly denied the right to cast their votes on Election Day – sometimes as the result of a concerted effort to deny certain people the right to vote, but most often the result of simple human error.

During the last election:

1. In one New Mexico county, election officials withdrew 58,000 ballots because of an error in the database, leaving that state's five electoral votes up in the air for days.
2. In New Orleans, many voters were not allowed to vote because the state's motor vehicles department never processed their voter registration applications, as required by the Motor Voter laws.
3. In Maine, many voters were refused the opportunity to cast ballots at the polls because they were improperly purged from the voter rolls.
4. In Virginia, there were reports that many minority voters were asked for multiple forms of identification before being given their ballots.

There were many other reports of voter intimidation, failed machinery, overwhelmed poll workers, and general confusion received from voters and election officials all over the country.

The fact is, this is a nationwide problem that requires a comprehensive nationwide solution. And only Congress is uniquely situated to implement such reforms. That is why we Democrats in Congress chose to take on the difficult task of reforming our Nation's election process.

In conducting this review of our election system, we were struck by the lack of attention given to the system prior to the November elections. Government, it seems, has abdicated its responsibilities

when it comes to conducting elections. While government has attempted to keep pace with private industry in meeting the needs of a technologically advanced society, our voting systems and technologies have lagged far behind. Until now, we have been content to sit back and accept our election system with all its faults, rather than imagining the possibilities.

It took a titanic event like the Florida recount last November to show us that we cannot afford to be content with our current system. Government must treat our election system as it treats other government programs – by adapting to the times. Many government services are now available via the internet, through computerized technology or by automated phone systems. Yet our most precious governmental program – the operation of our elections – has been virtually ignored. Voters in many jurisdictions cast their votes on equipment that has been in use for several decades. We must invest in the system or it will continue to fail our democracy.

Failures have occurred at every level of government, and at every stage of the electoral process. The federal government has ceded responsibility for conducting federal elections to the states, but has not provided the states with any funding to support their efforts. For their part, state and local jurisdictions have failed to allocate adequate resources to election officials and, until now, elections have ranked far down on the priority list.

For this reason, Congress must assume a role by providing funding to the states to improve their election systems. Congress also should assure that all citizens voting in federal elections should have the same rights to cast their ballots and have them count. The Civil Rights Division of the U.S. Department of Justice should increase its efforts to enforce federal voting rights laws, and work with other federal agencies and the states to oversee the administration of our nation's elections and ensure that resources provided by Congress are fairly allocated.

It is government's responsibility to ensure that citizens have the information and ability to elect their representatives, and that election officials have the resources to conduct elections. This report provides a blueprint for modernizing our election system, professionalizing the way our system is run, and allocating the resources necessary to implement the system.

## About the Special Committee

The November 2000 election showed that the nation's election system is failing the American people. In the aftermath of the 2000 presidential election, the House Democratic Caucus formed this Special Committee on Election Reform to address the problems with our Nation's election process.

In February 2001, House Democratic Leader Richard Gephardt appointed the members of this Committee and its Chair, Representative Maxine Waters (CA-35). The Vice-Chairs of this Committee include the ranking Democrats on the House Committee on the Judiciary and the House Administration Committee, Representatives John Conyers, Jr. (MI-14) and Steny Hoyer (MD-5), respectively. These two House committees are vested with the authority to pass legislation effecting changes to our election process.

From the beginning, our stated goal has been to ensure the integrity of the election process while increasing voter confidence and participation.

Since its formation, the Committee has conducted a series of public hearings around the Country designed to educate and inform us in developing solutions to repair our broken system. In all, the Committee held a total of six public hearings:

Philadelphia, PA	April 2, 2001
San Antonio, TX	April 20, 2001
Chicago, IL	May 19, 2001
Jacksonville, FL	June 18, 2001
Cleveland, OH	July 21, 2001
Los Angeles, CA	August 11, 2001

We began in Philadelphia, the birthplace of our democracy, and traveled to different regions of our Country to hear from election experts, representatives from the NAACP, ACLU, and other Civil Rights organizations, state and local election officials, poll workers, representatives of the disability community, experts on ballot design, military voting officials and, most importantly, voters. What we found at these hearings was a lack of uniformity in election laws between the states, frustration with the voting process, confusion with voting equipment and a complete lack of confidence in the ability of election officials and poll workers to safeguard an individual's right to vote.

Frankly, some of what we heard was startling. For example:

- ▶ In Philadelphia, Juan Ramos and Petricio Morales testified about the city's method of verifying voter eligibility for those voters whose names do not appear on the precinct roster. These voters must travel to police stations and go before a judge to determine whether or not they have the right to vote. Voters must then travel all the way back to the polling location in order to cast their votes. Many of these voters end up not voting either because they are intimidated by going to a police station or because it is logistically impractical.
- ▶ In San Antonio, we heard from Ms. Carmen Martinez, who went to vote last November at the same precinct she always has, only to be told that she could not vote because she was not on the precinct roster. Her name apparently had been purged from the rolls because she had not voted in a recent election. Ms. Martinez left the precinct embarrassed and unable to cast her vote. We were informed that Texas purged nearly 750,000 voters across the state prior to the November election.
- ▶ The State of Illinois recorded the highest number of uncounted presidential votes last November. In the City of Chicago alone, over seven percent (7%) of the ballots cast failed to register a vote for president. Most of the spoiled ballots resulted from outdated voting equipment and confusing ballots that attempted to squeeze 456 punch positions on a ballot that was intended for 312.
- ▶ In Duval County, Florida, almost eight and a half percent (8.5%) of the ballots cast in the November election were not counted for one reason or another. This number does not even account for the thousands of other registered voters who were denied the right to cast their ballots because they were denied access to the polls or because their names were improperly purged from the voting rolls. These findings were highlighted in the recent report issued by the U.S. Commission on Civil Rights.
- ▶ In Cleveland, we heard election officials describe the difficulties they encountered locating adequate polling locations and finding poll workers to staff these locations. We also heard testimony about a mother and daughter who live at the same address and went to vote together on Election Day, yet found out they were assigned to different voting locations when the daughter's name did not appear on the precinct roster. The League of Women Voters also testified about their voter education efforts, which are designed to fill the gap left by state and local governments.
- ▶ Finally, in Los Angeles, we heard Laura Camberos, a high school student who served as a poll worker under a county outreach program, talk about the importance of including younger citizens in the electoral process. We also heard from an ex-felon who was never told his voting rights could be restored. Moreover, we learned that Los Angeles County, the largest election jurisdiction in the Country, must provide election materials in seven languages to

service the county's ethnically diverse population. We also heard from a representative of the ACLU, which filed a lawsuit against the State of California alleging use of inferior voting equipment in minority areas.

These hearings proved that the problems we discovered in Florida during the 2000 presidential election were not unique. In fact, they are part of a larger national problem. We thank all of the election officials, experts and voters for coming to our hearings and taking the time to share their knowledge and experiences with us. Their involvement has been instrumental in helping us develop solutions to the problems plaguing our election process.

Further, in the months since the November election, there have been studies conducted and reports issued by several organizations and commissions. The U. S. Commission on Civil Rights conducted an extensive investigation into allegations of voting irregularities in Florida during the 2000 presidential election. The House Committee on Government Reform's Special Investigations Division issued a study examining income and racial disparities in uncounted ballots recorded during the 2000 presidential election. The CalTech/MIT Voting Technology Project issued an extensive report on upgrading voting technologies and improving voter registration systems. The National Commission on Federal Election Reform, a bi-partisan commission co-chaired by former Presidents Jimmy Carter and Gerald Ford, issued a report presenting a series of recommendations for reforming our election process. Finally, the Minority Staff of the House Judiciary Committee recently issued a report on nationwide election irregularities. Many other studies have been issued.

We commend the work of all the organizations and commissions that have been studying our election system and recommending ways to reform our process. All of these reports have helped inform the Members of Congress as we develop a response to this problem.

This report is the culmination of six months of intense study on the issue of election reform. In reaching our findings and recommendations, this Committee relied on testimony from our hearings, reports and studies issued by other organizations, and independent research based on information obtained from state and local election officials, various publications and websites.

This report proposes measures to support and supplement those bills which already have been introduced in Congress, identifies key areas where minimum national standards are appropriate, and recommends changes at the state and local levels. We recognize that uniformity may not be the answer in all circumstances, but certain fundamental reforms are necessary to ensure that all eligible voters are afforded the opportunity to cast their ballots and have their votes properly counted.

We believe the findings set forth in this report will go a long way toward ensuring the integrity of the election process, increasing voter participation and restoring the confidence of the American People.

## **A Blueprint for National Reforms**

The Committee explored a vast number of issues in determining how to improve our election process. Some of these issues involve upgrading old voting equipment such as punch card machines, which gained substantial attention following last fall's presidential election. However, technological advances in voting equipment alone will not solve all of the problems with our electoral process. After all, our election system is run by humans, not machines.

Thus, we know there can be no true election reform unless, in addition to equipment upgrades, election officials and poll workers receive appropriate training on how to implement our voting system, antiquated and unjust policies are removed from the process and voters are sufficiently educated on how to use the system. What follows is an examination of the issues affecting our election system and this Committee's recommendations for addressing those issues.





# **The Federal Government's Role in America's Elections**



## Uniform Voting Standards

*“No man is good enough to govern another man without that other's consent.”*

- Abraham Lincoln

There are varying opinions on what the federal government's role should be in conducting elections. While extensive powers have been granted to Congress to establish laws pertaining to federal elections, states contend that elections are fundamentally local events that should be conducted at the local level without federal interference.

Currently, all elections, including federal elections, are run by the states, which generally rely on local election officials to implement and administer voting systems within their jurisdictions. Thus, even within states, counties may use different types of voting equipment and may employ different standards for counting ballots.

Given the confusion surrounding our recent elections, many people have seized upon the lack of uniformity in our election system, and called upon Congress to implement uniform national standards for federal elections. Suggested national standards have included a standardized national ballot, uniform poll closing time, standardized voting equipment and a uniform system for counting votes.

Presidential elections are unique. We all vote for the office of president. Thus, as we saw in Florida, the laws of one state or even one county may very well impact the choices of voters nationwide. This would argue in favor of some minimum national standards. However, the opposition to this endeavor is strong.

The Constitution grants the federal government the power to dictate how federal elections must be run. Article I, Section 4, Clause 1 (Elections Clause) states the following:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to the Places of chusing (sic) Senators.”

While the Constitution grants primary authority to the states, the Framers included language that Congress could impose restrictions on the states if necessary to ensure proper elections. Courts have interpreted this provision as giving Congress the authority to regulate the election of Senators as well.<sup>1</sup>

Congressional authority to regulate Presidential elections has not been as clearly defined, and there is limited guidance from case law.<sup>2</sup> While the Supreme Court has held that Congressional authority to regulate Presidential elections is broader than merely regulating the time of choosing the President, there is no law governing the extent of Congressional authority to pass legislation regulating Presidential elections.

Congress does not have the authority to regulate state and local elections. In essence, the Constitution, through the Elections Clause, grants the power to conduct elections to the states, with the stipulation that Congress can step in when deemed necessary to deter discriminatory practices in federal, state and local elections.<sup>3</sup> The federal government maintains this authority under the 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup> and 26<sup>th</sup> Amendments to the Constitution, the Voting Rights Act of 1965 and the National Voter Registration Act of 1993.

The Supreme Court has noted that “the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates.”<sup>4</sup> Most states have decentralized elections, so localities carry the brunt of responsibilities in election administration.

The National Conference of State Legislatures (NCSL), the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASED) have all spoken against the possibility of federally conducted elections. The NCSL is not seeking federal funding for election reform, but should Congress make money available to states, the NCSL supports block grants for states to appropriate as they wish for reform measures.<sup>5</sup> The NASS has requested that the federal government fully fund the continuous update of the voluntary Federal Voting Systems Standards (issued by the Federal Election Commission) and the development of voluntary management practice standards, and also requests that Congress provide block grants to states and localities to implement election reforms adopted by the states and localities without federal input.<sup>6</sup>

The National Commission on Federal Election Reform recently issued a report calling for a myriad of reforms to our election process, but stopped short of requiring states to comply with any minimum national standards.

We recognize that state and local jurisdictions are in the best position to determine what is best for their voters, and we believe the federal government should provide funding to state and local governments to improve their voting systems. However, we do not believe that funding, without some basic minimum standards, is sufficient to achieve meaningful reform. If states were allowed to opt out of the recommended changes in federal elections, voters in those states would be denied the opportunity to participate in federal elections on the same basis as voters in other states which adopt the reforms. In presidential elections, where the votes of citizens in one state are dependent on the votes of citizens in others, this discrepancy could diminish the impact of votes in those states that agree to implement these reforms.

An “Additional Statement” accompanying the National Commission’s report argues that “certain reforms are fundamental enough to stand on their own as requirements, independent of any federal largesse.” The authors stated:

“ ‘One person, one vote’ is not a principle for local officials to trade off against potholes or jails, nor should it be conditioned on the willingness of Congress to appropriate an incentive in any given budget cycle. ... Congress is honor bound – perhaps in this field as in no other – to ensure that the promises

it makes through law to the American people will indeed be kept.”<sup>7</sup>

We concur with these statements, and urge the adoption of certain fundamental standards that will strengthen the accuracy of voter registration lists; reduce the number of eligible voters who are wrongfully denied the right to vote; provide bilingual voting materials for those who need them; provide sufficient voting information to all registered voters in advance of the election; reduce the error rate at the polls; require polling place and voting equipment accessibility to the elderly, blind and physically disabled; and allow any registered voter to request an absentee ballot. These recommendations reflect certain fundamental principles that do not infringe upon the states’ rights to conduct elections.

### **Recommendations**

Congress should pass legislation providing the necessary funding to state and local governments to improve their voting systems, and requiring states to implement the following minimum national standards in conducting federal elections:

1. States must create and maintain statewide voter registration databases that are accessible by election workers at the polls on Election Day;
2. No voter may be removed from the voting rolls for mere inactivity, or for the mere failure to respond to a notification from election officials absent some other indicia of death, criminal conviction, or change of residence to a location outside of the jurisdiction;
3. Provisional ballots must be offered to any voter whose name does not appear on the roster of eligible voters or who encounters a problem regarding eligibility at the polling place and believes he or she is entitled to vote;
4. Jurisdictions that serve qualified language minority groups under the Voting Rights Act must provide bilingual voting materials for all aspects of elections. This includes pre-election materials, such as sample ballots and voter guides, and materials provided at the polls on Election Day, such as ballots, instructions and visual aids;
5. Sample ballots and voting information shall be mailed by election officials to every registered voter in a jurisdiction in advance of the election. Such materials shall include the name and address of the voter’s polling place; the date of the election and the hours during which the polling place will be open; instructions on how to vote using the equipment employed in that jurisdiction; information on voting rights under federal and state laws; information on the right to request a provisional ballot if an issue arises at the polling place; and contact information if the voter needs to speak with election officials on Election Day;
6. Any voting system used in federal elections must contain error detection devices which can be accessed at the precinct so that voters can correct any errors before the ballot is cast and counted. Voting systems must either prevent a voter from overvoting or warn a voter that he

or she has chosen more than one candidate for a single office. Voting systems also must warn a voter that he or she has failed to vote for certain offices or has voted for fewer than the number of candidates for which he or she is entitled to vote;

7. Any polling place and voting system used in federal elections must be accessible to voters with physical disabilities, the blind, the visually impaired and the elderly, and must allow them to cast a secret ballot; and
8. Absentee ballots must be provided to any eligible voter who requests one, as long as an application for absentee voting is submitted in a timely manner.

## Federal Funding and Oversight

*“Only Congress, with its powers and resources, is in a position to reform many of the problems faced by voters in Florida and around the country during the last election.”*

- Committee Chair Maxine Waters, Jacksonville Hearing

Election reform should not be a one-time phenomenon. Although it took an event like last fall's election to bring the issue to the Nation's attention, our election system has been in disrepair for years. While we have experienced dramatic improvements in technology and efficiency in other sectors of society, our election system has been left behind. We must continue to improve our system as we experience further demographic shifts and advances in technology.

For this reason, we believe that the federal government should assume a stronger role in overseeing the continuing development of our Nation's election system. Congress should provide funding to enable states to meet minimum national standards and provide guidance on the implementation of new procedures for conducting federal elections.

### Federal Funding

Congress must immediately authorize funding to enable states and local jurisdictions to upgrade voting equipment and implement the proposed minimum national standards.

The initial investment necessary to upgrade our voting system will be substantial. According to the CalTech/MIT report, states and localities spend roughly \$1 billion annually on elections.<sup>8</sup> Until now, the bulk of this has been spent in the area of registration (\$300-400 million), with \$150-200 million spent on equipment upgrades.<sup>9</sup> The report concluded that a nationwide upgrade to electronic voting would cost \$2.6 billion, with an upgrade to precinct-level optical scan systems costing \$1 billion.<sup>10</sup> The report recommended that the federal government absorb this cost, as well as the additional cost of upgrading registration systems.

The National Commission on Federal Election Reform based their cost analysis on the CalTech/MIT numbers, and concluded that the federal government should share the role of funding elections 50/50 with the states. They also noted that overall spending on election administration should increase by \$300-400 million annually.<sup>11</sup>

We have received estimates that it will take anywhere from \$3-6 billion to upgrade our nation's voting equipment and implement the reforms discussed in this report by the year 2004. This will require a significant commitment from the federal government and increased commitments from the states. However, we must be prepared to provide an ongoing commitment beyond 2004. These numbers are substantial, but it costs money to run a democracy. Government should make this commitment to the American People.

## **Responsibilities of Federal Government**

With the assistance of, and in conjunction with, state and local elections officials, the federal government should:

- ▶ Develop regulations to govern compliance with minimum national standards in the conduct of elections;
- ▶ Administer grants to states and local jurisdictions to upgrade voting equipment and comply with minimum national standards;
- ▶ Conduct studies on the administration of elections and recommend new procedures;
- ▶ Develop voter outreach and education efforts and examine new technologies for voting equipment;
- ▶ Assist state and local election officials with the implementation of new programs and technologies; and
- ▶ Issue periodic reports and make recommendations to Congress regarding the conduct of elections and compliance with federal standards and requirements.

The U.S. Department of Justice's Civil Rights Division (DOJ) has been the primary agency responsible for ensuring compliance with the Voting Rights Act and other Civil Rights laws as they relate to elections. The Federal Election Commission, through the Office of Election Administration (OEA), also has been given responsibility in the conduct of elections. However, the OEA's role primarily has been advisory. The agency has conducted studies, developed voluntary voting system guidelines and reported to Congress on the impact of the Voting Accessibility for the Elderly and Handicapped Act of 1984 and the National Voter Registration Act of 1993.

Critics of the FEC note that the agency's responsibility for elections is overshadowed by its activities in the area of campaign finance. Some have advocated for the establishment of a completely new federal agency to administer federal grants and work with the states to develop and implement new programs and technologies. The National Commission, for example, called for the creation of a new federal agency, as have a number of bills that were introduced in Congress.

We believe that the DOJ's enforcement powers should be increased, and that the DOJ should assume additional responsibility for assuring that the minimum national standards recommended in this report are implemented by the states. The DOJ should work with the OEA or a new federal agency to administer federal grants, adopt regulations, conduct studies and assist states with the implementation of minimum national standards and development of new programs.

We do not express a preference for the FEC or a new federal agency. We simply state that the federal government should make it a priority to assist state and local election officials with the implementation of national standards by the 2004 general elections. Federal agencies should work with the states to ensure that funds are being spent in ways necessary to bring jurisdictions in compliance with the proposed minimum national standards. The Department of Justice should be responsible for determining whether the states are, in fact, complying with these requirements.



## **Recommendations**

1. The federal government should allocate funding as soon as possible to states and local jurisdictions to upgrade voting equipment and meet the minimum national standards proposed in this report by 2004. Congress should provide continuing funding to develop new programs and technologies that will assure our system for conducting elections adapts with the times.
2. The U.S. Department of Justice should work with the Federal Election Commission or a new federal agency, and the states, to oversee the implementation of minimum national standards, conduct research and testing of new technologies, assist states with voter education and registration efforts, develop criteria for poll worker training, study and report on state compliance with federal laws, and ensure that our election system remains current. Enforcement should continue to rest with the Justice Department's Civil Rights Division.



# **The Mechanics of Voting in America's Elections**



## Voter Registration

*“When I moved, I registered at City Hall because I was told when I changed my driver’s license that I wouldn’t be eligible to vote in all elections if I used the new motor voter law.”*

- Carol Cleigh, Chicago Hearing

As voter turnout continues to drop, efforts have been made to ease voter registration requirements in the hope this would open the process to more voters. While there are many factors impacting voter turnout, including increasing voter dissatisfaction with the political process, the starting point for any discussion is voter registration. We see two key issues affecting voter registration: barriers to registration and accuracy of registration records. We address these issues here and in the next section of this report.

### **National Voter Registration Act of 1993**

Amidst growing concern that states were placing too many obstacles on minority and disabled residents trying to register to vote, Congress passed and President Clinton signed the National Voter Registration Act (NVRA) in 1993. The Act, known as the “Motor Voter” law, took effect in January of 1995.

NVRA requires states to provide simultaneous voter registration applications with motor vehicle driver’s license applications or renewals; agency-based registration at all offices providing public assistance and state-funded programs for persons with disabilities; and a process by which registration forms can be mailed to election officials.<sup>12</sup> The Act also places limitations and guidelines on how voter registration lists may be updated.

Motor Voter has been heralded by government officials for increasing access to the polls. While states initially viewed Motor Voter as a challenge to their autonomy in conducting elections, states have, for the most part, streamlined their procedures to incorporate these federal regulations.<sup>13</sup>

Enforcement is the most challenging aspect of the NVRA. Some states have been slow to offer many of the services called for under the Act. Often, motor vehicle agencies do not transmit registration applications to election officials in a timely manner, and some agencies ignore this information completely. We have heard countless stories across the Nation about people who registered to vote through Motor Voter, only to find that their names did not appear on the registration list when they went to the polls on Election Day. Adding to the problem is the fact that the NVRA does not require that voters be given a receipt to confirm they registered to vote. Thus, voters who do not appear on the rolls often have no proof of registration.

For this reason, government agencies must develop procedures for the prompt transmittal of voter registration applications to election officials. We believe state and local governments should develop

statewide computerized voter registration databases that enable election officials to access voter registration information gathered by other government agencies, so long as security and privacy concerns can be addressed. Such systems would facilitate registration and provide a more comprehensive means for updating voter records. Furthermore, statewide systems would enable election officials to track voters who may move to different jurisdictions within the same state. However, we should ensure that the availability of such information does not lead to more liberalized purging standards.

Further, statewide voter registration databases must be accessible at the polls on Election Day. Often, precinct rosters are printed prior to the closing of the registration period. Therefore, a voter's name may appear on a registration database, even though it does not appear on the precinct list. Having access to the database at the polls would resolve many of these issues.

### **State Efforts to Ease Registration Laws**

States vary on the time frame for registering to vote prior to an election. The NVRA says that no state may require registration forms to be received more than 30 days prior to an election. Forty-four states and the District of Columbia require applications to be received or postmarked ranging from 10 to 30 days before an election. Six states currently either do not require registration (North Dakota and some parts of Wisconsin) or allow for "same day" registration at the polls on Election Day (Idaho, Minnesota, New Hampshire, Wyoming and some parts of Wisconsin). Turnout in these states is higher than in most states, with four of the six states in the top ten for voter turnout.<sup>14</sup>

Same day registration provides the greatest access to our electoral system. It allows any citizen who is swayed to vote during the latter stages of a campaign to cast a ballot. Minnesota incorporated same day registration into their electoral system in 1974 and, on average, 15.86% of those voting each year since then have registered on Election Day. In 2000, 18.88% of voters registered at the polls on Election Day.

Minnesota historically has had high voter turnout - ranking among the top ten in voting age population turnout in all but three elections in the past 40 years - and same day registration appears to have offered another option for the state's voters to participate in the system - the state has had the highest voting age population turnout of any state seven times since 1974, while only reaching this level once between 1948 and the adoption of same day registration.

Similarly, other states with registration cut-off dates closer to Election Day tend to have a higher turnout of registered voters. In the November 2000 election, Connecticut, with a registration deadline of 14 days prior to the election, boasted a 77.54% turnout of registered voters.<sup>15</sup>

## Registration and Turnout Statistics: 1960-2000

Year	Voting Age Pop. (VAP)	Registered Voters (RV)	% RV of VAP	Turnout (T)	Difference	%T of VAP	%T of RV
2000	209,128,094	159,593,394	76.31	105,407,635	9,141,833	50.40	66.05
1996	196,498,000	146,370,909	74.49	96,265,802	-8,139,353	48.99	65.77
1992	189,529,000	137,958,178	72.79	104,405,155	12,810,464	55.09	75.68
1988	182,778,000	130,456,628	71.37	91,594,691	-1,057,989	50.11	70.21
1984	174,466,000	128,131,614	73.44	92,652,680	6,137,459	53.11	72.31
1980	164,597,000	116,885,734	71.01	86,515,221	4,959,432	52.56	74.02
1976	152,309,000	108,642,980	71.33	81,555,789	3,837,235	53.55	75.07
1972	140,776,000	105,861,541	75.20	77,718,554	4,505,183	55.21	73.42
1968	120,328,000	90,779,802	75.44	73,213,371	2,568,779	60.84	80.65
1964	114,090,000	89,236,818	78.22	70,644,592	1,806,388	61.92	79.17
1960	109,159,000	84,872,096	77.75	68,838,204	n/a	63.06	81.11

Source: CRS Report 96-932, a subsequent memorandum on the 1996 election, and 2000 data from EDS staff. (Based on Election Data Service data.)<sup>16</sup>

### Impact on Turnout

According to data from Election Data Services, there are currently nearly 160 million registered voters in America, up from 146 million in 1996. This represents almost 78% of the voting age population.

A Federal Election Commission (FEC) report after the 1998 election stated that 17,613,211 new voter applications were processed nationwide during the 1997-98 election cycle, 42.9% of which were completed at motor vehicle agencies under the Motor Voter law.<sup>17</sup>

However, it is nearly impossible to tell whether registration affects turnout. Michael Traugott of the University of Michigan, a leading expert on election participation, has conducted an extensive study in this area. He concluded that Motor Voter may add voters to the registration lists, but there is no guarantee these people will vote. Also, he stressed that it is too soon to tell whether or not Motor Voter has had a positive effect on turnout, as the law has not been in place long enough to gauge its effect, and there are several variables to take into account when considering reasons why people don't vote.<sup>18</sup>

Regardless of whether increased voter registration directly corresponds with increased turnout, every effort should be made to bring new voters into the election process. Government should make registration as easy as possible, rather than leaving it up to political parties, interest groups and community-based organizations to register voters.

We would like to see governments conducting voter registration drives that are particularly directed to minority communities, new citizens and students. These efforts should take place everywhere from citizen swearing-in ceremonies to high schools to shopping centers. We envision a process where new citizens receive voter registration cards with their citizenship papers, and high school students receive registration forms with their diplomas. Moreover, consideration should be given to shortening the registration period in those states that still require registration thirty days prior to an

election.

### **Recommendations**

1. Election officials must develop statewide, computerized voter databases that facilitate registration and provide a more comprehensive means for updating voter records. These databases should be accessible at each precinct to resolve voter registration issues at the polling place.
2. The Committee recommends stronger enforcement of the NVRA, ensuring that state and local agencies covered by the Act offer registration materials and develop procedures for the prompt transmittal of voter registration applications to election officials, possibly by linking computer databases.
3. Citizens who register through government agencies under NVRA should be given a receipt with a unique number to prove that they, in fact, registered to vote.
4. Congress should appropriate funding to state and local government agencies to assist with the development of comprehensive voter registration drives that are particularly focused on registration of new voters.
5. States should consider shortening registration periods or even same day registration as a means of increasing voter participation.



## Purging

*“Why do we purge voters? Why shouldn’t the burden be on the government and not the citizens to say that there’s a reason for you not voting? If you registered at 18 or 22 or yesterday or last week or last year, unless you have done something that prohibits you from voting, there should be a presumption that you are a voter.”*

- Congresswoman Sheila Jackson Lee, Chicago Hearing

It is not uncommon on Election Day for registered voters to go to the polls only to find that their names do not appear on the precinct roster. Sometimes, a voter’s name may not appear due to a change in eligibility. Other times, this may be attributable to a change in a voter’s residence. Many times, however, voters may find their names missing from the roster for no apparent reason. Thousands of voters were erroneously denied the right to vote in the November 2000 election because their names had been incorrectly removed from the voting rolls. Many of these votes may have been saved had their states offered a process for provisional balloting, as we discuss in another section.

Election officials argue that purging is necessary to keep registration lists current and to trim the cost of preparing election materials for voters who are no longer active. Some assert that voting lists must be updated to eliminate the possibility of fraud, such as votes being cast by deceased voters. Frankly, we are more concerned that inappropriate criteria are being used to remove voters’ names from the registration rolls than we are about the rare instance where people cast ballots in the name of dead voters. The purposeful disenfranchisement of hundreds of thousands of eligible voters is inexcusable.

### **National Voter Registration Act of 1993**

The NVRA provides guidelines for the states to follow when updating voter registration lists. Registered voters may not be removed from the list of eligible voters unless:

- ▶ Requested by the voter;
- ▶ By reason of criminal conviction or mental incapacity, as provided by State law; and
- ▶ Through a program which makes a reasonable effort to remove the names of ineligible voters from the list of eligible voters by reason of death or change of residence, which must be carried out in accordance with specified guidelines.<sup>19</sup>

The disenfranchisement of convicted felons is addressed in another section. Here, we focus on the guidelines that provides broad discretion to the states to develop programs to remove ineligible voters from the rolls. With this discretion, states have created various programs which have at times proven to be effective and at other times proven to be disastrous. In most states, county election officials are primarily responsible for implementing these programs and maintaining voter registration rolls, though in some states the rolls are maintained by the state. As a result, the procedures employed within a state may be inconsistent from county to county.

## How Purging Takes Place

Under the NVRA, voters may not be removed simply because they haven't voted in recent elections. Yet many states appear to do just that.

Texas removed 750,000 voters from the registration rolls prior to the November 2000 election, some for no apparent reason other than the fact that they hadn't voted recently. In San Antonio, the Committee heard testimony from a registered voter, Ms. Carmen Martinez, who was refused a ballot at her long-time polling place last November after she was told her name did not appear on the list. Ms. Martinez testified that she had never lived at any other address since the day she registered to vote, and couldn't understand why she was denied the right to vote.

In Texas, county election officials mail non-forwardable renewal certificates every two years to all registered voters not currently on a "suspense list." If the renewal certificate is returned by the post office as undeliverable, the voter is placed on the suspense list and, simultaneously, they are sent a forwardable confirmation notice. Voters whose renewal certificates are returned by the post office, do not respond to a confirmation notice and have not voted in two consecutive federal election cycles are purged. According to the law, if a voter on the suspense list goes to the polls on Election Day, he or she can vote by swearing in writing he or she is legally eligible to vote, and election officials will update the voting records.

Ms. Martinez, apparently, was not afforded this opportunity. As we discuss later in this report, such safeguards only work if poll workers are properly trained and voters are informed of their right to ask for such a ballot. Some states permit voters to challenge purges prior to Election Day, but the odds of voters finding out they were purged prior to arriving at the polls are slim. Typically it is too late to participate in the election, even though they are eligible.

In the case of Carmen Martinez, who wasn't offered an affidavit and had no information regarding the challenge procedures, she still is ineligible to vote. In fact, thousands of voters like Ms. Martinez will continue to be precluded from voting until someone takes affirmative steps to restore their voting rights.

Like Texas, Missouri voters who do not respond to requests for residence verification are purged from the lists after inactivity for two consecutive general elections occurring after the requests are mailed out. The City of St. Louis did not follow the state's purging procedures in the November election, leading the U.S. Department of Justice to monitor a city election in March of this year and to investigate the movement of voters to the inactive voter list.

Prior to the November 2000 election, St. Louis purged its rolls of several thousand voters whose registration verification postcards were returned to the City Clerk as undeliverable. However, the City only mailed one non-forwardable verification postcard to voters, disregarding the requirement that a forwardable confirmation be sent after the preliminary verification is returned by the post office. These voters were placed on an inactive voter list. This list is required to be at each polling place, so that voters whose names are on the inactive list can verify their address and registration at

the polls and vote.

Unfortunately, this did not occur. The City did not distribute these lists to the precincts. A copy was available at the Board of Elections, and poll workers were to call the Board to confirm registration. Yet all precincts did not have communication networks and thus couldn't contact the Board. As a result, some voters went to the Board's office to obtain a Court Order to vote. In addition, more confusion resulted in the City when one Judge ruled that due to the errors, all polling places in the city should remain open until 10 p.m. This decision was overturned by an Appellate Court shortly thereafter.

While many states have suffered the unintended consequences of purging, Florida appears to represent a clear abuse of the purging system. Following the 1999 Miami Mayoral election, in which findings of fraud helped overturn the election, the Florida state legislature moved to clean up the registration rolls, and authorized \$4 million for a private company to "scrub" the rolls. In the end, more than 173,000 names were removed from the list, based on shoddy information such as people with similar names and birth dates as ex-felons. Taking the fiasco one step further, Governor Jeb Bush ordered the removal of ex-felons who had been convicted in other states, but had previously had their rights restored in those other states. These actions by the Governor were in complete disregard of the Full Faith and Credit Clause of the U.S. Constitution, which requires each state to abide by the decisions of another, as well as three state court decisions in Florida against this practice.<sup>20</sup>

The NAACP, The Advancement Project, ACLU, Lawyers' Committee for Civil Rights Under Law, and People for the American Way Foundation filed suit in Florida over the improper purging of voter rolls, among other issues. The suit alleges that the purging process had a disproportionate impact on African American voters because a larger percentage of African American voters than Caucasian voters were wrongly removed from the voter registration lists.

## **Recommendations**

1. The federal government should develop guidelines designed to navigate the states through effective purging activities under National Voter Registration Act. These guidelines should include address verification procedures and standards for verifying voter information, such as criminal conviction records.
2. Removal from voter lists should require some affirmative act on the part of the voter or confirmation through multiple sources that a voter has moved, rather than relying strictly upon notification forms that are returned by the post office as undeliverable.
3. Notification forms should have spaces available for postal officials to provide forwarding addresses, so that election officials then can send re-registration packets to voters who have moved, rather than simply removing them from the rolls.

## Provisional Ballots

*“In the 20 minutes I was at the polls, two people were turned away by poll workers and left the room. Two more people would have also left had I not asked the poll workers why they weren’t giving out provisional ballots. All I could think was, if it happened four times in the 20 minutes I was there, what happened during the rest of the day?”*

- Raven Lopez Workman, Los Angeles Hearing

A common scenario in every election is the voter who shows up at the polls only to discover that his or her name does not appear on the precinct roster or is otherwise denied the right to vote. Sometimes this may be the fault of the voter, who may have moved and forgotten to re-register at the new address. More often, however, it is because the system has failed the voter.

Poll workers may overlook a voter’s name on the precinct roster, or may not be aware that the voter is listed on a supplemental roster containing the names of voters who registered shortly before the election. Election officials may misspell a voter’s last name when inputting registration information into the system. Voters may show up at the wrong precinct because they did not receive notice that the polling place had moved.

As we discussed previously, another common problem is the failure of motor vehicles departments and public service agencies to forward registration information for voters who registered through the Motor Voter laws to election officials on a timely basis. Still other voters may have had their names improperly purged from the voting rolls, or may be denied a ballot because of improper identification or threats of intimidation.

Rather than denying these otherwise qualified voters the right to vote, provisional voting affords a mechanism for allowing people to vote and having their registration verified later. We believe that provisional voting is necessary to the administration of a fair and effective election system, and provides the ultimate safeguard to ensuring a person’s right to vote. For this reason, we believe that provisional voting should be required in every jurisdiction.

### **States’ Use of Provisional Ballots**

Presently, more than half of the states do not provide a system for provisional voting. In the states which provide the option, laws differ markedly. In some states, provisional voting is referred to as voting by affidavit, tendered, challenged or questioned ballots. Amazingly, some states do not have any system of provisional voting.

In all, eighteen states use a system of provisional balloting, while an additional six states have same day or no registration (therefore eliminating the necessity of provisional balloting). We have found, however, that even in many states that offer provisional voting, the system has no practical effect. Some states that allow provisional balloting do not permit voters to cast their votes provisionally unless they are at their proper precinct. Thus, if voters show up at the wrong precinct within the same

voting jurisdiction, their votes will not be counted. In other jurisdictions, the availability of provisional ballots is undermined by poorly trained poll workers who do not know to offer them to voters.

California provides a good example of a provisional voting system that generally works. As part of their training materials, poll workers in California are instructed to advise voters of their right to cast a provisional ballot if the voter otherwise would be denied the right to vote. This, of course, does not always happen.

Nonetheless, if the system operates as it should, voters are allowed to cast a ballot and provide information to election officials designed to verify the voter's eligibility. In accordance with the NVRA, voters in California who move into a district within 15 days of an election are permitted to vote either at their prior polling location or provisionally at their new polling place, as long as they are located in the same district.

Provisional ballot envelopes are turned into election officials on election night, but they are not counted right away. Over the next days and weeks, election officials research the voter's information and determine whether he or she was eligible to vote. If the voter is, in fact, eligible, the ballot is counted. Voter information contained on the provisional envelope accompanying the ballot is used to update the voter's registration information, if necessary. This is a time consuming and costly process, but one that is necessary to ensure that every vote cast is counted.

In the November 2000 election, 99,450 provisional ballots were dispersed at the polls in Los Angeles County. Of these, 61,521 were eventually counted, roughly 61.86%.<sup>21</sup>

The numbers are even higher in other states and localities. In the state of Alaska, out of the 22,642 "questioned" ballots dispersed, 22,293 (98.45%) were counted.<sup>22</sup> In King County, Washington, which includes Seattle, 13,307 of the 17,082 provisional ballots cast were ultimately counted, or 77.9%.<sup>23</sup> In Cuyahoga County, Ohio, which includes Cleveland, 16,392 out of the 22,915 provisional ballots cast were counted (71.53%).<sup>24</sup> In Wake County, North Carolina, a remarkable 84.45% of provisional ballots were counted in the November election.<sup>25</sup>

Less populous states, including Rhode Island, South Dakota and Montana, do not use provisional ballots, citing the close proximity to election offices in case of disputes and the fact that most poll workers know regular voters by name. While these reasons generally suffice in smaller states, we do not believe they adequately substitute for a system that ensures a citizen's right to vote.

In Pennsylvania, officials cite fraud as a major concern regarding provisional voting. Thus, at our Philadelphia hearing, we learned how local election officials have dealt with the problem. Juan Ramos, Founder of the Delaware Valley Voter Registration Education Project, and Petricio Morales, an average voter, testified that voters whose names do not appear on the precinct rosters are required to travel to police stations to see a judge, who determines whether or not they have the right to vote. Voters must then travel all the way back to the polling location in order to cast their votes.

Needless to say, many voters who are faced with the choice of traveling to the police station or leaving, end up not voting either because they are intimidated by going to a police station or because it is logistically difficult.

This problem is not limited to minority communities, however. Andrew Dinniman, a County Commissioner from Chester County, a suburban area outside of Philadelphia, testified that some voters are required to travel 45 minutes to an hour to the office of the county seat to provide proof of registration if they want to vote on Election Day. Mr. Dinniman stated that countless voters left the polls without voting rather than going through that difficult procedure on Election Day.

At our Jacksonville hearing, we were told that voters were turned away at the polls after being told they could not vote. Ironically, Florida had an affidavit voting procedure that allowed for provisional voting under limited circumstances. This procedure, which was used sparingly in the November elections, could have saved tens of thousands of Florida voters from being disenfranchised.

Voters also should be allowed to cast provisional ballots at precincts within the same voting jurisdiction that do not have identical ballots as the voter's proper precinct. We believe that provisional voting procedures should enable election officials to count votes for those candidates or measures that are common to all ballots, such as candidates for President and U.S. Senator, and discard any other vote appearing on the ballot that the voter otherwise would not have been able to cast at his or her precinct. We are disturbed that some jurisdictions are apparently unwilling to do this. We urge election officials to adopt duplication procedures or develop ways to program their vote tabulation systems to register these votes.

The need for provisional ballots may diminish as we modernize our election system and develop voter registration databases that are accessible at the polling place. In the future, when systems are entirely computerized and polling places have access to statewide voter registration databases, voters may be able to cast their ballots at any polling place in the state. We are excited by these possibilities.

Until that time, however, we must do what we can to ensure that as many voters as possible are able to exercise their rights to vote. Provisional voting provides that assurance. In fact, it seems to us that a consensus has formed on this issue at the national level. Both the National Commission on Federal Election Reform and the CalTech/MIT report have strongly endorsed the use of provisional ballots. The Dodd-Conyers bill currently pending in the Senate and legislation to be proposed in the House by Representatives Ney and Hoyer both contain provisional voting requirements. An additional bill (H.R. 1004) requiring provisional voting has been introduced in the House by Congresswoman Jan Schakowsky. We thus believe that states should implement these provisional ballot procedures immediately.

## **Recommendations**

1. All states should be required to offer provisional ballots to any voter whose name does not appear on the roster of eligible voters or who encounters a problem regarding eligibility at

the polling place and believes he or she is entitled to vote.

2. Provisional ballots must be offered to voters at the polling place, and not by any means that requires the voter to travel to any location other than the polling place to cast a provisional ballot. Provisional ballots must be given to election officials for verification of the voter's eligibility either at the polling place or at a central counting location.
3. The ballot of any voter whose eligibility to vote has been verified must be counted and included in the final certified vote totals for each race in which the voter was eligible to vote.
4. If the voter casts a ballot in a precinct other than his or her own, election officials should count the votes for those candidates or measures for which the voter would have been eligible to vote in his or her correct precinct.
5. Poll workers should be responsible for informing voters whose names do not appear on the voting rolls of their right to vote by provisional ballot, and should be trained in the procedures pertaining to the use of provisional ballots.
6. Election officials should use information provided by the voter to update voter registration information once the voter's eligibility is verified.
7. Election officials should notify any voter whose provisional ballot is rejected that their voter registration information must be updated, and send them a voter registration form.

## Bilingual Voters

*“English is my second language, and I understand the problem of Asian-Americans who just – who are new citizens. The culture is new to us, and the way the government operate is not the same as in our country. We used to just doing what we’re told, and here we get to participate, and we don’t know how. We need a lot of education and civic classes, and we are also need bilingual poll workers to help new citizens to mainstream into American society.”*

- Laura Abrams, Los Angeles Hearing

The multitude of languages spoken in our Country presents many challenges to election administrators. To protect language minorities, laws have been passed to ensure the ability of non-English speaking Americans to participate in our electoral system.

The Voting Rights Act of 1965 (VRA) requires states and political subdivisions to provide election materials in a language other than English if more than 10,000 citizens of the voting age population or 5% of the population speak that language. Any material or information that is provided to English-speaking voters must be provided to members of each language minority in the state or subdivision. This includes sample ballots, voter instructions and ballots themselves.

On Election Day, bilingual poll workers are required in precincts covered by the Act so they can assist voters in casting their ballots. This is not always easy. Finding election day workers with certain language skills takes a great deal of effort. The number of workers required to adequately staff precincts can also pose a challenge to election administrators.

At the Los Angeles hearing, we heard from a number of voters who had problems on Election Day with language issues. In Los Angeles County alone, the VRA and County ordinances require that voting materials and assistance must be provided in seven different languages -- English, Spanish, Chinese, Japanese, Korean, Vietnamese and Tagalog. This requires hundreds of poll workers who speak these languages. To complicate matters, some languages have several different dialects. Thus, simply recruiting poll workers who speak Chinese may not be enough, as their dialect might not be familiar to other voters from China.

In Los Angeles County, Russian-speaking citizens are part of a growing language minority. While the County thus far has not been required to provide poll workers who are fluent in Russian, this may change with the new census data. The Russian community in Los Angeles has reported frustration with the lack of Russian-speaking poll workers in certain communities.

We encourage election officials to work closely with community-based organizations who are active in minority communities falling under the jurisdiction of the Voting Rights Act to recruit bilingual poll workers. In addition to those language minority groups which are protected by the VRA, state and local election officials should work with local organizations to recruit poll workers who speak



other languages to provide additional assistance to voters who are not in a protected class, but who nonetheless require language assistance on Election Day.

**Recommendation**

1. Bilingual ballots, sample ballots, voting instructions, bilingual poll workers and other voting materials must be made available to voters of qualified language minority groups in jurisdictions covered by the Voting Rights Act of 1965. The Department of Justice should increase its enforcement efforts in this area.

## Voter Education

*“...[R]egarding voter education and the possibility of government helping with our efforts, we would welcome it immensely. At this time, the League [of Women Voters] primarily receives funding through the generous support of foundations that are here locally. ... If the government were more involved and possibly offered stipends or some form of monetary help or assistance, we would greatly appreciate it.”*

- Sherece Brown-Gray, Cleveland Hearing

One positive result coming out of the 2000 Presidential election is that voters are more aware of our election process. The word “chad” has now become a part of our national lexicon. Frank Martinez of the Los Angeles City Clerk’s office recently testified at the Los Angeles hearing about the success of the city’s “Got Chad” voter awareness campaign in the 2001 Los Angeles municipal elections.

The U.S. has offered assistance to nations throughout the world establishing systems for conducting elections. Yet little attention has been paid to educating voters in our own country on how to maneuver their way through our election process. Many jurisdictions do not even send voting information to voters. In many places, political parties, unions or community-based organizations are the only source of voting information for voters.

The cost of printing and mailing voting materials is not insignificant, and education drives place additional personnel and monetary constraints on election officials. In order to provide voters the opportunity to fully participate in the electoral process, state and local election officials must make voter education a priority, and the federal government must be prepared to provide funding to support these efforts. The federal government also could alleviate these costs by creating a special postage rate for election materials.

### State Voter Education Efforts

Voter guides are an important tool that is not used as widely as most officials would like. An article by Peter Brien, slated for publication this fall, takes a close look at voter guides and their effect on the public.<sup>26</sup> His findings include:

- ▶ Eighteen states produce pamphlets for initiatives; four are required by law to create guides for elections to office (Utah, Washington, Oregon and Alaska), but these states’ distribution requirements vary - Utah is not required to mail them, and the other three mail one guide to each household with a registered voter;
- ▶ Voter guides in these four states include candidate statements, registration information and internet addresses. They vary on other information, such as on sample ballots and absentee ballots;
- ▶ Estimates for producing and distributing voter information guides range from \$0.21 to \$0.85 per registered voter for these four states. They are funded through appropriations from state legislatures. Candidates are sometimes charged for their statements; and

- Voters in these four states feel the materials are useful, not too complicated, unbiased and want their distribution to continue.

In California, the Secretary of State's office sponsors a Voter Registration Week which, in addition to registering new voters, aims to educate voters on the candidates and how to vote. The state is required by law to mail a voter information guide to all households with registered voters. These guides contain pro and con arguments for issues on the ballot, but only include information on candidates in statewide races. They do not contain candidate statements. A new law takes effect in 2002 requiring the guides to include statements from all candidates for statewide office. For November 2000, the State mailed roughly 12 million guides at a total cost of \$5.1 million, roughly \$2.35 per guide.<sup>27</sup> According to Brien's research, a 1998 survey of California voters found that 70% felt the guide is the most important source of information they received, more important than television stories, newspapers and televised presidential debates. The results were similar in other states that mail out such materials.

In Oregon, a 360-page booklet on candidates, initiatives and referenda was distributed to all households with registered voters for last November's election.

Some states and localities, including Washington, D.C., offer "practice ballots," where voters have the opportunity to familiarize themselves with the ballot and voting equipment at the polls prior to working with their actual ballot.

Every state requires the creation of sample ballots - the variance lies with their distribution. Only five states require that sample ballots be mailed to all registered voters. Another four states require a notice of election to be mailed to all registered voters, and sample ballots may be included in this information. Unfortunately, many other states do not require that they be distributed at all (leaving this up to the counties), but require only that they run in newspapers or be on display in government offices or in polling places.

Particularly as we move toward new voting technologies, it is incumbent upon election officials to teach voters how to use our system. We must apply the same thinking to voter education as we do to voting equipment – we must adapt our thinking to adjust to a changing society. Merely posting information in the newspaper or sending someone a postcard is not enough. Election officials must bring our system to the people.

At the Philadelphia hearing, Robert Lee, Voter Registration Administrator for the City and County of Philadelphia, stressed that Philadelphia election officials would be undertaking an aggressive voter education campaign prior to the next federal election to educate voters on the new touch-screen machines that were recently purchased. Mr. Lee related that government employees will provide demonstrations in malls, shopping centers, senior centers and churches in an effort to educate voters on the new system.

Efforts like this are to be commended, and we encourage other jurisdictions to undertake such efforts, whether or not they have purchased new voting technology.

Informational materials also should be readily available at the polling place. Posters demonstrating the technique for using voting equipment should be posted in every ballot booth so that voters can have this information before them as they vote.

### **Information Available Online**

All states now offer election information on their websites. Many of these sites are highly informative, and are a tremendous benefit for individuals who use the internet. However, we cannot as yet rely upon this medium as a primary source of information because many people do not have internet access.

Brien's study looked at the internet as a source of voter education. He noted a Commerce Department study showing that as of August 2000, 60% of households did not have internet access.<sup>28</sup> Also, he noted a study conducted by the Pew Research Center noting that in early 2000, only 6% of respondents said they relied on the internet for most of their election information.<sup>29</sup> In a more recent Pew poll, conducted in late 2000, 11% of respondents named the internet as a top source of election information.<sup>30</sup>

While it is useful to offer this option as a medium for information dissemination at the present time, the internet should not serve as the sole source for voter education and outreach.

### **Educating Young Voters**

Most education efforts are coupled with voter registration drives targeted to young voters. MTV's Rock the Vote is a prominent education/registration drive which has successfully targeted young voters. The League of Women Voters also conducted a nationwide campaign to register and educate young adults for last November's election. On the local level, education/registration drives in Missouri (Show Me the Vote) and Rhode Island (Democracy Concept) have also contributed greatly to educating young voters.

At the San Antonio hearing, Texas Secretary of State Henry Cuellar discussed Project Vote, an effort to teach high school students the values and mechanisms of voting. He noted this effort is only available in 140 schools, but stated that he is planning to expand it to all high schools in the state, saying, "If we don't start them early, we're going to lose them later."

We agree with Secretary of State Cuellar that we need to introduce students to the election process early. Students should be encouraged to participate in the process even before they can vote, either by serving as poll workers (discussed elsewhere in this report) or by working in political campaigns. Further, voters should be prepared and encouraged to vote once they reach voting age. Thus, we encourage election officials and schools to work together to develop aggressive programs to educate our youth on the role of voting in our society and on how to vote. Election officials should provide

on-site demonstrations of voting equipment in schools.

### **Organizations Launch Own Education Drives**

In an effort to fill the gap left behind by government's inattention to voter education, several organizations, both partisan and nonpartisan, have launched their own education campaigns. The non-partisan League of Women Voters is the most prominent example, with each state branch sponsoring debates, candidate discussions and issue briefings; offering poll training opportunities; mailing voter guides; and visiting high schools to discuss the importance of voting.

At the Cleveland hearing we heard from Sherece Brown-Gray of the League of Women Voters' Cleveland Chapter, who testified about their voter education efforts, which include a Voter Information Center hotline to aid voters on Election Day if they don't know where their precinct is located or have been turned away at the polls. The Center also produces voter guides, which include information on all candidates and questions posed to voters. Ms. Brown-Gray testified that these guides are available to the public for free.

Labor unions, political parties and trade associations also conduct education drives conducive to their own agendas. The Sierra Club, the Christian Coalition and the National Right to Life Committee are among the groups who distribute voter education guides.

While we encourage the participation of all of these organizations, it is fundamentally government's role to ensure that voters have sufficient information to participate in our electoral process. We hope the series of reforms proposed here will be the first step toward an increased government role in that regard.

### **Recommendations**

1. State and local election officials must mail sample ballots to every registered voter in their jurisdictions for federal elections. Such sample ballots shall include the name and address of the voter's polling place; the date of the election and the hours during which the polling place will be open; instructions on how to vote using the equipment employed in that jurisdiction; information on voting rights under federal and state laws; information on the right to request a provisional ballot if an issue arises at the polling place; and contact information if the voter needs to talk to election officials on Election Day.
2. State and local election officials are encouraged to develop aggressive voter education programs which should target young people, new citizens and other first-time voters. These programs should be targeted particularly to young people. Programs should be set up with schools to educate students about voting systems and provide demonstrations of voting equipment. Information booths should also be set up in public places, such as shopping malls, supermarkets and post offices, so voters can ask questions and practice voting prior to Election Day.

3. Adequate signage in multiple languages should be placed in polling places with clear instructions on how to vote.

# **How America Votes**





## Voting Equipment

*[Duval County Supervisor of Elections John Stafford] himself told us that he had petitioned for different voting equipment. He knew the punch card ballots that we were using were antiquated, ... but the funding was, unfortunately, not available to get the new equipment."*

- John Parker, Jacksonville Hearing

The CalTech/MIT report estimated that roughly 1.5 million presidential votes were lost in the last election due to faulty ballots and equipment.<sup>31</sup> Much of the Nation, in fact, is still voting on antiquated equipment that has high error rates, breaks frequently, and is inaccessible to voters with physical disabilities and special needs. Very few jurisdictions currently use equipment that allows voters to verify their votes and correct errors prior to leaving the polling place. In fact, most voters were unaware of the types of problems one might encounter in trying to cast a ballot until the Presidential election last November.

In the wake of the 2000 presidential election, many state and local governments moved to upgrade voting equipment to avoid the problems that occurred last fall. To date, few bills have actually passed state legislatures. Florida and Georgia are two states that have passed comprehensive reforms. Recognizing the extraordinary expense involved in upgrading our Nation's voting equipment, additional legislation has been introduced at the federal level to provide grants to the states for equipment improvements.

We believe the federal government should play a substantial role in providing funding to the states to upgrade voting equipment. State and local jurisdictions must abide by certain minimum national standards in the selection, operation and administration of their voting systems for any meaningful changes to be achieved.

### Types of Voting Equipment

There are five types of voting equipment currently in use in the United States: paper, lever, punch card, optical scan and electronic. They are reviewed here, relying on statistics drawn chiefly from the CalTech/MIT report and Election Data Services, a private entity which studies elections.

#### ■ *Paper Ballots*

Paper ballots are used in only 3% of the nation's precincts, representing 1.4% of voters throughout the nation (almost exclusively in less populated rural areas).<sup>32</sup> With paper ballots, voters mark their choices directly on the ballot, next to the name of the candidate or slate. They are easy to read, but very slow to tabulate. Paper ballots have been in use since the 1800's, but have been relied upon less and less through the years. They have experienced a relatively low residual (overvote and undervote) rate of 1.8% in Presidential elections from 1988-2000, and a 3.3% rate in Gubernatorial and Senatorial elections during that same timeframe.<sup>33</sup>

## ■ *Lever Machines*

Lever systems require voters to pull levers for each candidate, registering votes on dial mechanisms which record the total number of votes for each lever position. Precinct workers record the vote totals from the dials at the end of the day. Some of the more advanced lever systems also provide a paper printout of the total number of votes recorded on each dial. Lever systems contain a safety feature which prevents a voter from overvoting; however, there is no safeguard for undervoting.

These machines are found in many of the larger jurisdictions, including New York City and Philadelphia. They were introduced originally as a way to combat concerns over deliberate ballot stuffing and alteration. In that sense, lever machines provide a protection against alteration because they do not generate any paper ballot that can be manipulated. On the other hand, the absence of any paper ballot does not provide for an adequate audit trail in the event the election results are in dispute. Further, these machines are cumbersome, expensive to purchase and maintain, and are extremely difficult for voters with physical disabilities to operate. Roughly 22% of precincts (18% of voters) used lever machines in 1998.<sup>34</sup> These machines registered a relatively low residual vote rate. From 1988-2000, 1.5% of Presidential votes cast on lever machines were not counted; however, 7.6% of Gubernatorial and Senatorial votes, a substantial number, did not register a vote.<sup>35</sup>

## ■ *Punch Card Systems*

The punch card system is the most prevalent system, being used by 37.44% of precincts and 36.43% of voters.<sup>36</sup> There are two types of punch cards: the Votomatic system and the Data Vote system. The Votomatic system consists of a punch card with 312 numbered voting positions and an accompanying booklet containing the names of the candidates. This system is considered the most economical system, processing a heavy volume of ballots in a reasonably reliable manner. Conny McCormack, the Los Angeles County Registrar, estimates that punch card ballots cost approximately \$.07 per ballot.<sup>37</sup> The drawback of the system, as we saw in Florida, is that tabulating machines are unable to pick up “hanging chads” and other markings that are not punched all the way through.

The Votomatic is found in most large urban jurisdictions, such as Los Angeles County; Cook County (Chicago), Illinois; Harris County (Houston), Texas; and Dade County (Miami), Florida. Because of the overwhelming number of punch card machines used in Florida, one study found that 84% of the spoiled ballots in that state were attributable to punch card systems. In Chicago, where a remarkable 123,000 ballots did not record a vote for president in the November 2000 presidential election, we were shown a precinct-based verification device that was purchased by Cook County election officials for use with their punch card machines. This mechanism rejects ballots with undervotes and overvotes, allowing voters to correct their ballots before leaving the polls. Because of partisan wrangling in the Illinois State legislature, this device was not authorized for use during the November 2000 election. Had it been available, this equipment could have saved tens of thousands of votes in the November 2000 election.

The Data Vote system contains the names of candidates directly on the ballot. The appropriate punch position is found next to the name of the candidate, giving the voter some opportunity to confirm that he or she has cast his or her vote correctly. However, because of the volume of information provided on the ballot, multiple ballots are often required in elections that involve a substantial number of candidates and issues. This also leads to a slower tabulation system, as multiple ballots have to be separately run through the tabulation machines.

Punch cards were first used in 1964 and are now used in one-third of precincts throughout the nation, making them the most widely used voting system.<sup>38</sup> They have registered a relatively high residual rate of 2.5% in Presidential elections between 1988 and 2000, and a rate of 4.7% in Gubernatorial and Senatorial races.<sup>39</sup>

### ■ *Optical Scan Systems*

Voters using optical scan systems fill in ovals on pieces of paper using a pen or pencil. These systems, which were introduced in the 1980's, are generally used by small and mid-sized counties.

Optical scan systems are user-friendly. Most Americans have used systems like this at some point in their lives, whether taking tests in school or completing surveys. Optical scan systems come in two forms – those that are tabulated at central counting locations and those that are tabulated at the precinct. The tabulation system for ballots counted at the precincts is faster than punch card ballots, but the system for processing absentee ballots is extremely slow and cumbersome.

Design flaws with this system include the inability of the computer to record votes made without complete markings, the possibility of voters not marking the correct box or oval, and voter fatigue. However, because the names of candidates appear directly on the ballot, voters have the ability to double check their votes. Moreover, in-precinct optical scan equipment detects voter error and allows voters to correct their ballots at the polls.

Optical scan systems are also very costly. The CalTech/MIT report estimates that in-precinct optical scan equipment costs \$6-8 per voter to acquire, and another \$1-2 per voter to operate.<sup>40</sup> Conny McCormack, Los Angeles County Registrar, estimates that optical scan ballots cost approximately \$1.00 per ballot, compared with \$.07 per ballot for punch card ballots. Thus, the idea of purchasing and maintaining this equipment for a jurisdiction the size of Los Angeles County is daunting. For this reason, optical scan systems may not be appropriate in all jurisdictions.

Roughly 25% of precincts (27% of voters) use the optical scan system, which is becoming increasingly popular throughout the nation.<sup>41</sup> The CalTech/MIT study reported very low residual rates for optical scan systems, with a 1.5% residual rate in Presidential races between 1988 and 2000, and 3.5% in Gubernatorial and Senatorial races.<sup>42</sup>

## ■ ***Direct Recording Electronic Systems (DRE)***

Electronic voting represents the most state-of-the-art voting system. It allows the voter to see the choices on a screen and select a candidate. These machines also allow a voter to review his or her selections before moving on to the next screen, and do not allow a voter to cast a vote for more than one candidate in a particular office, thereby increasing the accuracy of the system.

Touch screen voting has been successfully implemented in a number of jurisdictions, mostly small-to medium-sized counties. Last fall, Riverside County, California, successfully conducted an election using the DRE voting system. Larger counties such as Los Angeles County have successfully employed this process on a limited basis. This system is user-friendly for those who know their way around ATM machines and computers. However, many voters may be intimidated, particularly those who are not technologically advanced. Other voters have expressed skepticism in a system that does not provide any tangible ballot. Roughly 7% of precincts involving 9% of voters nationwide vote electronically.<sup>43</sup> DRE machines registered a residual voting rate of 2.3% in Presidential elections from 1988 to 2000, and 5.9% in Gubernatorial and Senatorial elections.<sup>44</sup>

In addition to being accurate, these systems provide the fastest method for tabulating votes. However, they do not come without cost. DRE machines are extremely expensive, which makes it difficult for the larger counties that typically employ punch card systems to transition to touch screen systems. The CalTech/MIT report estimates that DRE machines cost \$18-25 per voter to purchase, with another \$0.50-1.00 per voter to operate.<sup>45</sup>

Another problem with these systems is that they generally do not produce a satisfactory audit trail that would be available in the event of a system failure or recount. Better voting equipment doesn't eliminate the possibility of a close election; therefore, regardless of the system used, we must maintain some capacity to manually review the votes. Some of the early DRE machines did not have any audit capability. The newer DRE machines do generate an internal receipt, but these receipts may not be available if the machine malfunctions, leaving no audit trail.

### **Residual Votes as a Percent of all Ballots Cast, 1988-2000**

<b>Machine Type</b>	<b>President</b>	<b>Governor &amp; Senator</b>
Optical Scan	1.5	3.5
Lever Machine	1.5	7.6
Paper Ballot	1.8	3.3
Electronic (DRE)	2.3	5.9
Punch Card	2.5	4.7

Source: CalTech/MIT Voting Technology Project

## **Internet Voting**

We take a moment to address voting over the internet. Internet voting has been tested in some jurisdictions. The State of Arizona conducted an internet voting experiment during the 2000 general election involving 250 volunteer participants who cast sample ballots. Of those who tried it, 116 responded to a survey which found that all respondents thought the system was either “easy” or “very easy,” and almost all preferred it to the current system.<sup>46</sup> When asked where they would vote if internet voting were available, 65% said they would vote from home and another 15% said from their office.<sup>47</sup> However, we question the reliability of these statistics in that most or all of those polled were predisposed to internet voting, and were no doubt swayed by the novelty of the system.

Similar to touch screen voting, internet voting provides accuracy and speed in the tabulation of votes. However, internet voting may discriminate against certain classes of voters. Access to computers may be more readily available in high-income, low-minority communities.

Further concerns exist regarding the integrity of internet voting, as election officials lose control over who is actually voting; security, as hackers gain access to voting systems; and transmission failures, leading to the corruption of election results. Finally, internet voting presents the same auditing concerns as exist with some touch screen systems.

As discussed later in this report, the Department of Defense conducted an internet voting experiment for overseas service personnel in connection with the November 2000 election. Defense Department officials reported no security concerns with the system, and concluded that internet voting was more secure than the regular system of overseas absentee voting.<sup>48</sup>

## **The Impact of Voting Equipment**

Studies have explored how voting equipment impacts voters of certain racial groups and income levels. The Minority Staff of the House Committee on Government Reform’s Special Investigations Division, under the direction of Congressman Henry Waxman, conducted a study titled, “Racial and Income Disparities in the Undercount in the 2000 Presidential Election,” which was released in July 2001. The report analyzed voting results from 40 Congressional districts in 20 states (20 districts with high poverty rates and a large minority population, and 20 with low poverty rates and a small minority population). It also compared the percentage of residual votes for president in each district and investigated the impact of different voting machines on the uncounted ballots.

The findings of the report were presented to the Committee in Los Angeles by Congressman Cal Dooley, whose district was one of the 40 studied in the report. The report found that voters in low-income, high-minority districts were significantly more likely to have their votes discarded than voters in affluent, low-minority districts (4% compared to 1.2%), even in punch card jurisdictions (7.7% to 2%). The report also concluded that better voting technology significantly reduced the uncounted votes in low-income, high-minority districts (undercount rate was 7.7% on punch-cards, 4.7% on centrally counted optical scan machines, 4.5% on lever machines, 2.4% on DRE and 1.1% on precinct-level optical scan machines), and significantly narrowed the disparity in uncounted votes

between low-income, high-minority districts and affluent, low-minority districts (disparity of 5.7% in punch cards; disparity in precinct-level optical scan dropped to .6%). The report indicates that in-precinct optical scan systems had the greatest impact on narrowing the disparity.<sup>49</sup>

A *New York Times* analysis found that in Florida, 64% of African American voters live in counties using punch card ballots, compared to only 56% of whites.<sup>50</sup> According to the *Washington Post*, “most error-prone machines tend to be in the poorest counties.”<sup>51</sup>

A team of researchers from the University of Maryland and the University of Missouri, Kansas City, reached a contrary conclusion. Their study states: “Nationally, there is very little difference between whites and blacks, between the poor and non-poor, and between Democratic and Republican voters, in the likelihood of living in a punch card county. In a majority of states in which some but not all counties use punch card technology, whites, the non-poor and Republican voters are actually more likely than African Americans, the poor and Democratic voters to live in punch card counties.”<sup>52</sup> The study also found that, as a whole, counties utilizing punch card systems were larger and wealthier than those using other systems.

We believe the overwhelming statistical evidence supports the argument that poorer communities tend to vote on faulty equipment and have their votes not counted at a higher rate than more affluent communities.

### How We Voted in 1998 Election

Equipment	No. of Counties	Pct. of Counties	No. of Precincts	Pct. of Precincts	Voting Age Pop.	Pct. of VAP
Paper Ballot	410	13.06%	5,551	2.88%	3,750,397	1.39%
Lever Machine	480	15.29%	41,907	21.78%	48,973,908	18.16%
Optical Scan	1,217	38.76%	47,489	24.68%	73,463,341	27.24%
Punch Card	635	20.23%	72,027	37.44%	98,259,949	36.43%
Electronic (DRE)	257	8.18%	14,033	7.29%	23,915,034	8.87%

Source: Election Data Services (NOTE: 4.48% of counties use mixed systems)

### What System Should be Used?

The CalTech/MIT Voting Technology Project endorsed the use of in-precinct optical scan systems. These systems allow voters the opportunity to correct any errors prior to casting their ballots. The Project’s study showed that jurisdictions using in-precinct optical scan equipment had the lowest residual vote rates of all equipment types, even lower than DRE machines. This finding also was supported by the report issued by the Minority Staff of the House Committee on Government Reform’s Special Investigations Division.

The CalTech/MIT report expressed concern that many DRE machines are mechanically confusing and not well-designed. This may account for their higher residual vote rate. The report also expressed concerns regarding the reliability of some of these machines. However, we recognize that many of these concerns are being corrected, as DRE machines are further tested and developed.

The National Commission report did not endorse a certain voting system, but rather called for the states to develop their own benchmarks for voting system performance based on residual vote rates. The Commission suggested that states and localities whose systems do not currently meet these benchmarks replace their equipment. The Commission stated that such equipment decisions should be left up to the individual states, but that the federal government should develop equipment standards in conjunction with the states that, among other things, allow voters to correct their mistakes at the precinct.

Both reports stress the importance of moving toward precinct-level systems that detect errors and ensure that voters can correct their ballots before casting them. In that regard, we agree with these recommendations. We also agree with the National Commission that the selection of voting equipment should be left up to state and local governments. Only they are in a position to determine which systems best suit the needs of their citizens in light of financial considerations. We note, however, that because punch card systems are the most widely used voting system and tend to be the most error prone, special attention should be given to those jurisdictions that utilize these systems.

Election technology is an evolving process, and we would not want to require heavy investments in particular technology that might be superseded by improved technology four years from now. For that reason, any funding provided by the federal government for technological upgrades should be an ongoing process, and the federal government should invest in the research and development of new voting technologies. The Hoyer-Price Voting Improvement Act (H.R. 775), for example, provides for an ongoing investment in technology improvements through a federal grant program.

As suggested in other reports, any voting system must also be accessible to voters with physical disabilities and allow them to cast a secret ballot. In that regard, we are encouraged by some of the developments we have learned about with respect to DRE machines, in particular those that provide audio instructions to voters.

We disagree with the National Commission, however, in the implementation of the system. Unless we require states to abide by certain minimum national standards in conducting federal elections, there is no guarantee they will be met. Allowing states to opt out of these reforms will essentially minimize the impact of improvements in those states that agree to implement these reforms.

This is borne out of the fact that only 32 of the states adopted the voluntary national performance and testing standards developed by the Federal Election Commission (FEC) in conjunction with the National Bureau of Standards (now the National Institute of Standards and Technology) in 1990. Those standards included technical requirements for hardware, software, security, quality assurance and testing procedures. States that have regularly tested their equipment in accordance with these

procedures have fared much better on Election Day than states which have ignored their equipment.

In order to ensure consistency in federal elections, we believe it is reasonable to require states to comply with certain fundamental principles when conducting federal elections. Thus, we believe that any voting system used in federal elections must:

- ▶ Have error detection devices at the precinct that provide an opportunity for voters to correct their errors before the ballot is cast and counted;
- ▶ Prevent voters from overvoting or notify voters before their ballots are counted that they have voted for more than one candidate for a single office;
- ▶ Warn voters that they have failed to vote for certain offices or have voted for fewer than the number of candidates for which they are entitled to vote;
- ▶ Be accessible to voters with physical disabilities, the blind, the visually impaired and the elderly, and must allow for the casting of a secret ballot; and
- ▶ Provide language accessibility for voters in jurisdictions which are covered by the Voting Rights Act.

The federal government should assume responsibility for testing and certifying voting equipment that meets these criteria. States may then determine which approved systems are most appropriate and cost-effective for their needs.

### **Recommendations**

1. The federal government should provide funding to the states and local governments for the purpose of upgrading voting technology. The Committee does not endorse any one voting system as we recognize that the selection of voting equipment should be left up to those who will be using the system and are in the best position to evaluate their needs and financial considerations.
2. Any voting system used in federal elections must contain error detection devices at the precincts that provide an opportunity for voters to correct their errors before the ballot is cast and counted. Voting systems must either prevent a voter from overvoting or must notify a voter before the ballot is counted that he or she has chosen more than one candidate for a single office. Voting systems also must warn a voter that he or she has failed to vote for certain offices or has voted for fewer than the number of candidates for which he or she is entitled to vote.
3. Any voting system used by state and local governments in federal elections must be accessible to voters with physical disabilities, the blind, the hearing impaired and the elderly, and must allow for the casting of a secret ballot.



4. Any voting system used by state and local governments in federal elections must provide language accessibility for voters in jurisdictions which are covered by the Voting Rights Act.
5. The federal government should have responsibility for testing and certifying new voting equipment that meets all of the above criteria.

## Disabled Voters

*"I am blind. I have never cast a secret ballot. Someone has known for whom I chose to vote in every election."*

- Jim Dickson, San Antonio Hearing

Physically disabled voters continue to find participating in the electoral process challenging. From registering to vote to entering a polling booth to casting a secret ballot, the American electoral process does not adequately take into consideration the needs of physically challenged voters.

There are more than 35 million voting age citizens with physical disabilities. The non-partisan National Council on Disability (NCD) reports that of these 35 million potential voters, 14 million are not even registered,<sup>53</sup> and the non-profit National Organization on Disability (NOD) reports that another seven million are registered but do not vote due to logistical constraints.<sup>54</sup> NCD also notes that people with disabilities vote at a rate 11% lower than the general population.<sup>55</sup> Despite legislation requiring the system to be open to these citizens, the numbers have not changed in recent elections.

There are three issues pertaining to accessibility and voting. First, roughly 40% of voting-aged disabled persons are not registered to vote. The issue of access to the registration process is becoming increasingly prominent in the national election reform debate. Second, access to polling places remains elusive for voters with physical disabilities. Third, current voting equipment presents usability challenges to voters with physical disabilities and sight impairments.

Until the General Accounting Office completes a study on the issue of accessibility, statistical information will be scarce. The most recent federal study was completed in 1992 by the Federal Election Commission. However, Rutgers University and the University of Arkansas jointly conducted a survey into the accessibility of polling places and voting systems in the 1998 election. The random survey of 1,240 households was stratified to include 700 people with disabilities and 540 without disabilities.<sup>56</sup> The major findings included:

- ▶ People with disabilities were on average about 20 percentage points less likely than those without disabilities to vote, and 10 points less likely to be registered to vote, after adjusting for differences in demographic characteristics (age, sex, race, education and marital status);
- ▶ There is a large voting gap between disabled and non-disabled voters over the age of 65. While roughly 70% of non-disabled citizens over the age of 70 voted, the percentage dropped to 40% of disabled citizens over 70 years old;
- ▶ If people with disabilities voted at the same rate as those without disabilities, there would have been 4.6 million additional voters in 1998, raising the overall turnout rate by 2.5 percentage points; and
- ▶ People with disabilities are more likely than those without disabilities to have encountered, or expect, difficulties in voting at a polling place. Of those voting in the past ten years, 8%

of people with disabilities encountered such problems compared to less than 2% of people without disabilities. Among those not voting within the past ten years, 27% of people with disabilities would expect such problems compared to 4% of people without disabilities.

Some argue that absentee ballots provide ample opportunity for voters with disabilities to cast their ballots, but we have heard from many in the disability community that they want to be able to cast their ballots at the polls like anyone else. While we believe absentee ballots should be available for anyone who requests one, no voter should be required to vote by mail if he or she prefers not to. While no statistical data is available, anecdotal evidence suggests that voters with disabilities in jurisdictions that have implemented early voting periods have favored this method of voting, as such voting generally takes place in accessible public buildings; there are fewer crowds and pressures than on Election Day; and election workers are more capable of responding to the needs of voters. Nonetheless, we must see to it that Election Day polling places are accessible to all voters and that voting equipment is usable by everyone.

Even within the disability community different needs must be addressed. A polling place that is wheelchair accessible may not contain voting equipment that meets the needs of blind voters. Many of the new voting machines being developed contain voice activation devices and other features to assist voters with sight impairments. These types of features must be required of all new voting technologies. The federal government should provide funding for researching new technologies and developing new equipment to enable all citizens to cast a secret ballot at the polling place.

#### **Registration of Persons with Disabilities Under the National Voter Registration Act of 1993**

As discussed earlier, the NVRA requires that voter registration applications must be available at all offices providing public assistance and state-funded programs for persons with disabilities.<sup>57</sup> The NVRA also requires every state to report the number of registration applications received from disability agencies.

A 1999 NCD report stated that 75% of people with disabilities who received services from state vocational rehabilitation agencies were never asked whether they wanted to register to vote as required by NVRA.<sup>58</sup> In fact, according to the report, several states and agencies have largely ignored their responsibilities under the NVRA, arguing it is an unfunded federal mandate and they don't have the time to administer the paperwork or the space to keep records. A Harris poll conducted in 2000 concluded that more than 40% of disability agencies violate the NVRA.<sup>59</sup>

The NCD has recommended that all states follow South Carolina's lead on how employees at state agencies can assist disabled persons registering to vote.<sup>60</sup> The State produced a form which is distributed to disabled citizens utilizing state agencies. The form poses five options: (1) "Yes, I would like to register to vote;" (2) "I am not eligible to vote;" (3) "I am already registered to vote;" (4) "Registration assistance is offered, but I chose to register by mail (form provided);" and (5) "No, I would not like to register to vote at this time."

## **Inaccessibility of Polling Places and Casting of Ballots**

The Voting Rights Act of 1965 (VRA) gives voters with disabilities the right to have assistance in casting their ballots.<sup>61</sup> However, it does not require federal, state or local governments to eliminate the obstacles facing voters with disabilities.

The Americans with Disabilities Act (ADA) precludes public entities from discriminating against people with disabilities in the provision of public “services, programs or activities.”<sup>62</sup> This prohibition has been held by the courts as applying to elections.<sup>63</sup> But court decisions regarding what such “discrimination” means in the context of elections is a mixed bag.

The Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA) states:

Within each State, except as provided in subsection (b) of this section, each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.<sup>64</sup>

If no such accessible polling place is available, any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of the voter, must be assigned to an accessible polling place or provided an alternative means for casting a ballot on the day of the election.<sup>65</sup>

This statute applies only to federal elections. The statute does not define the term “accessible,” but leaves it to the states to decide. With such leeway, states have gotten around the requirements of the VAEHA. Unfortunately, while the statute allows private party suits to prevent violations of the VAEHA, it does not provide for the awarding of damages or attorneys’ fees. Thus, the VAEHA has not provided an adequate remedy for ensuring accessibility to the polling place.

There have been no official accessibility studies since the 1992 FEC study which showed that 14% (21,195) of the nation’s 151,396 polling places were inaccessible to disabled voters.<sup>66</sup> The FEC study stressed at that time that the number had improved since the passage of the VAEHA in 1984, when 27% of polling places were not accessible. However, these figures are based on self-reporting of election officials, not from surveyors visiting polling places. Thus, there is reason to believe the figures actually may be higher.

At the San Antonio hearing, Jim Dickson (then with the NOD) testified that the percentage of inaccessible polling places is closer 40%.<sup>67</sup> In Arkansas, a court settlement led to a report finding that 41% of that state’s polling places were inaccessible to the disabled.<sup>68</sup> In New Hampshire, a 1996 survey of 100 polling places found that 60 of them were inaccessible.<sup>69</sup> Most startlingly, 1,231 (73%) of the 1,681 polling places in Philadelphia were not accessible according to a 2000 study.<sup>70</sup> This led to a recent lawsuit on behalf of the city’s disabled voters claiming that only 46 of the city’s polling places are truly accessible.<sup>71</sup> The lawsuit is still pending.

The U.S. General Accounting Office is preparing a report on the accessibility of the nation’s polling places, which is due out in the fall of 2001. The disability community has expressed some concern about the report’s data collection methodology, however.<sup>72</sup>

Getting into a polling place is not the only challenge for disabled voters. Once inside, they must then actually cast their ballot. However, not all voting equipment is user-friendly to voters with disabilities.

Most complaints stem from the voting equipment and the voting booths. A survey by the National Voter Independence Project found that 52% of disabled voters indicated that voting booths would not accommodate an average-sized wheelchair.<sup>73</sup> Wheelchair users have mentioned that they are unable to use lever machines, as the levers are out of their reach. Voters with motor difficulties or without use of one or both arms cannot use a stylus with a punch card system.

Adding to the situation, some states require two officials, one from each major party, to enter the booth with voters requesting assistance to ensure the proper vote is cast. This has served to further upset the disability community. In other states, assistance can be provided by one poll worker, which has led to reports of coercion.

According to NCD research, 81% of blind voters rely on others to mark their ballots.<sup>74</sup> Jim Dickson, who is blind, testified before this Committee and others about his voting experiences, stating that his wife generally casts his ballot for him. But, on at least two occasions where his wife was not present, pollworkers tried to change his mind about his vote while assisting him.<sup>75</sup> Only Rhode Island offers a Braille ballot and voting guide.<sup>76</sup>

### **Endorsed Voting Equipment**

The National Organization on Disability prefers Direct Recording Electronic (DRE) voting equipment, stating it “is accessible for the overwhelming majority of people with disabilities.”<sup>77</sup> The organization says each of the other major voting systems present difficulties for some disabled voters, whether they are visually impaired, have upper body disabilities or are wheelchair-bound. The NOD reasons that DRE machines are the only equipment which offers the option of a secret ballot for most disabled voters.

The National Federation for the Blind and the American Federation for the Blind have lobbied for any election reform legislation to include money for states to purchase voting systems accessible to the visually impaired. The groups do not endorse specific equipment, but support any technology which ensures the secret ballot for their members, noting this can be achieved through speech-activated software and synthesized speech.

### **NCD Proposal**

The National Council on Disability recommended the following guidelines in its 2001 report, “Inclusive Federal Election Reform”:

- ▶ Support the right of all citizens to vote independently by guaranteeing accessibility to all stages of the electoral process, from voter registration to Election Day practices;
- ▶ Provide meaningful technical assistance and enforcement mechanisms to ensure the right to

- independent and accessible voting;
- ▶ Incorporate modern technological systems that enhance voting accessibility; and
- ▶ Set uniform federal legislative guidelines and criteria for the use of federal funds for voting reform, including the requirement to purchase accessible systems only.

Both the National Federation for the Blind and the National Organization on Disability support the Equal Protection of Voting Rights Act of 2001 (Dodd-Conyers), which contains language ensuring voting systems are accessible to all voters.

## **Recommendations**

1. Any polling place and voting system used in federal elections must be accessible to voters with physical disabilities, the blind, the visually impaired and the elderly, and must allow them to cast a secret ballot;
2. Congress should strengthen federal disability laws by developing regulations defining the term “accessible” as used in the VAEHA to ensure that polling places are truly accessible to all voters with disabilities, as well as blind and visually impaired voters. Congress should also amend the VAEHA to provide for damages and the awarding of attorneys’ fees and costs in private enforcement matters.
3. Congress should develop regulations strengthening the ADA by defining the terms “excluded from participation in,” “denial of benefits” and “discrimination” in the context of elections.
4. Congress should strengthen enforcement of the NVRA by providing funding to support a federal study of public assistance agencies to ensure they are distributing registration forms, offering satisfactory assistance, accepting completed forms and mailing them on a timely basis to the appropriate election agency.
5. The federal government should provide funding for research and development of new voting technologies that are sensitive to needs of voters with physical disabilities and visual impairments and provide features enabling these voters to cast a secret ballot. Such research should employ usability testing developed in conjunction with the disability community. These activities should be conducted by the proposed federal agency.
6. The federal government should provide funding to support a comprehensive study of nationwide polling places to determine their accessibility to voters with special needs, one that has the support and assistance of the disability community. The federal government should work with states and the disability community to develop compliance standards for polling places in each state.

## Absentee Voting

*“Last summer I made sure that I went to register to vote so that I could receive my absentee ballot while I was at school. I registered to vote, they canvassed my home, and I still ended up not receiving my absentee ballot after all.”*

- Maxiella Donohoe, Chicago Hearing

Absentee voting has reached an all time high in many jurisdictions. As people’s lives have become busier and time has become more precious, voters are turning to the convenience of absentee voting more and more. Last fall, in Los Angeles County alone, the number of absentee ballots that were cast exceeded the total number of votes cast in eight states.<sup>78</sup>

Surprisingly, many states do not permit absentee voting as a right. Moreover, some states maintain deadlines and procedures for requesting absentee ballots that make it prohibitive for voters to cast an absentee ballot. Many voters are confused by the instructional materials they receive to help them properly cast their absentee ballot and are unaware of deadlines for submitting their ballots.

The Election Center endorses “no excuse” absentee voting, opening the option to all registered voters who request an absentee ballot. On the other hand, neither the National Commission on Federal Election Reform nor the CalTech/MIT report support unrestricted absentee voting laws. We agree with the Election Center that absentee voting should be available to all voters. In fact, we believe that states should do more to make absentee voting easier.

### State Laws on Absentee Voting

All states allow some form of absentee voting, but the laws of each state vary.

Twenty-two states permit any registered voter requesting an absentee ballot to vote absentee. The other 28 states and the District of Columbia permit absentee voting only by voters who state a reason for not making it to the polls on Election Day (e.g. illness, travel, etc.).

California permits absentee voting without limitations. In the last 20 years, absentee voting in California has increased nearly 400%. In the November 2000 election, 24.6% of ballots cast in California were done by absentee ballot.

State laws also vary on when absentee ballots must be returned, whether witnesses are necessary and whether or not the voter must pay for return postage. Thirty-nine states require a witness or witnesses, with nine permitting a notary public to take their place. Four states pay for return postage. Nearly every state requires ballots mailed domestically to be received by the close of polls on Election Day; nine permit absentee ballots to be returned after Election Day.

Most states, including California, New York, and the District of Columbia, send information on how to vote by absentee and the deadlines for returning ballots along with the ballots requested by voters.

We believe that information advising voters of their right to request an absentee ballot and instructions for returning those ballots should be provided to all voters.

### **Who Votes Absentee**

Older voters, college students, disabled voters, military personnel and overseas voters tend to vote absentee at a higher rate than other voters. According to the National Commission on Federal Election Reform, better educated, wealthier voters are more likely to vote absentee and are more likely to know the procedures for absentee voting. The CalTech/MIT report notes that absentee voting tends to be heavier in the western states.<sup>79</sup>

The National Commission's report cites research that states that liberalized absentee voting might slightly increase turnout, but not significantly. The Commission is also concerned that absentee voting detracts from the ceremonial aspects of elections. The CalTech/MIT report is even more critical of absentee voting. It states that there is no evidence that liberalized absentee voting laws increase turnout. The report cites the example of Oregon, whose vote-by-mail system has seen turnout increase by 3.5% in the same time frame that the nation's turnout rate increased by 2.1%. However, the report notes that 16 other states had increases during the same period that exceeded Oregon.<sup>80</sup>

While absentee voting may not create any marked increase in voter turnout, it makes voting easier for individuals who are already predisposed toward voting. If this option were unavailable to them, we might otherwise lose these voters in any given election. Moreover, studies showing that absentee voting does not impact voter turnout do not take into account the lack of voter education about absentee voting. If government was better about informing potential voters of the availability of absentee ballots, more infrequent voters may take advantage of it.

Given the number of voters using absentee ballots, government should make voting by absentee ballot even easier. State and local government agencies should play a larger role in educating voters about casting absentee ballots, particularly the deadlines for requesting and returning them. Many voters put their absentee ballots in the mail on Election Day not knowing it will not be counted unless it is actually *received* by elections officials by the time the polls close that evening. Such a deadline is appropriate, but voters must be made aware of it.

Further, we believe that government should play a larger role in ensuring the return of absentee ballots by the stated deadline. State and local governments should provide drop boxes at public locations for the return and pick up of absentee ballots by election officials.

Moreover, Congress should enact legislation providing a special postal class for the return of absentee ballot applications and absentee ballots. This postal class should provide for expedited delivery at a reduced postal rate.

We hear the complaints of critics that absentee voting is subject to fraud and coercion. Fraud is always a concern with absentee ballots, from the application stage to voting to the verification stage.



There are reports of people improperly influencing voters casting absentee ballots in their homes, or people casting other voters' ballots, in every election. In the November 2000 election, Democrats questioned the validity of some 15,000 absentee ballots in Florida's Seminole County, after reports that Republicans were allowed to alter absentee ballot applications after they were received by election officials.

Efforts are made to ensure the absentee ballot is truly cast by the voter through signature verification. No doubt, an occasional fraudulent signature slips through, but this is a rare occurrence. States also provide safeguards to ensure that voters who request absentee ballots do not vote again at the polls on Election Day.

Coercion is another concern. Absentee ballots are fundamentally not secret ballots. This is a complaint we hear expressed by many in the disability community who may be required to vote by absentee ballot because of inaccessible polling places. Disabled and elderly voters who may rely on assistance are especially vulnerable to coercion in casting absentee ballots.

While we understand the concerns of the National Commission, we believe that the benefits associated with absentee voting more than outweigh the risks. Fraud and coercion may be of some concern, but the fact that absentee voting is a convenience enjoyed by many voters means we should be doing everything possible to ease absentee voting requirements. We see no logical reason why anyone who wishes to vote absentee should be precluded from doing so. Thus, we believe that states should allow absentee voting by any registered voter who requests an absentee ballot, and that a special postal class should be established to facilitate the timely return of absentee ballots.

### **Recommendations**

1. Absentee ballots must be made available to any voter who wishes to vote by absentee in a federal election. Voters should not be required to provide any reason for requesting absentee ballots.
2. Sample ballots and voter information materials should include information on requesting absentee ballots. Instructions on how to complete and return absentee ballots must be included with the ballots sent to voters.
3. Local election officials should provide secure drop boxes at public locations, which are accessible to disabled voters, for the return of absentee ballots. Election officials would be responsible for picking up ballots regularly to ensure receipt before the stated deadlines.
4. The federal government should adopt a special class of postage to facilitate the return of absentee ballot applications and absentee ballots.

## Felon Disenfranchisement

*“I am an ex-felon, and I didn’t know until today that I had the right to vote.”*

- Reynaldo Joaquin Reaser, Los Angeles Hearing

States have varying laws on the voting rights of convicted felons. Most states provide that citizens convicted of a felony lose their voting rights while serving their sentences. Only two states (Maine and Vermont) permit voting by all inmates. The others, and the District of Columbia, have differing definitions of felonies, varying time frames for restoration of civil and voting rights, and different procedures for having those rights restored.

The number of felony convictions has increased sharply over the past two decades as more and more crimes are defined as felonies, particularly in the area of drugs. The Sentencing Project reports that “an estimated 3.9 million Americans, or one in fifty adults, have currently or permanently lost their voting rights as a result of a felony conviction.”<sup>81</sup>

The concept of denying felons the right to participate in elections dates back to medieval times, when individuals who committed crimes were to suffer “civil deaths,” including banishment from the community. These disenfranchisement laws “gained new political salience at the end of the nineteenth century when disgruntled whites in a number of Southern states adopted them and other ostensibly race-neutral voting restrictions in an effort to exclude blacks from the vote.”<sup>82</sup>

The Sentencing Project has conducted studies which show disenfranchisement laws disproportionately affect African Americans. Thirteen percent of African American men are disenfranchised. They constitute 36% of all convicted felons. In Alabama and Florida, nearly one in three black men have lost the right to vote due to a felony conviction. Approximately 1.4 million African American men have been disenfranchised, as have 2 million whites and Latinos and more than half a million women.<sup>83</sup> In fact, at the Philadelphia hearing, Sandra Dungee Glenn, Chair of the Pennsylvania State NAACP Voter Fund, stated:

“The number-one growing population of incarceration today is black women, and so many of our households are headed by black women, that we are denying not just the right to vote of this current generation but of future generations, because all of us teach our children to vote when we take them to the polls with us.”<sup>84</sup>

We are concerned about the disproportionate affect these laws have on minority citizens, particularly African Americans. Ultimately, the Constitution and the courts will provide the last word on whether these laws are being enforced on a race-neutral basis. But we believe that once an individual has served his or her time for committing a crime, there is no reasonable basis to continue denying them the cherished right to vote. We thus believe that all states should enact laws simplifying the restoration of voting rights to ex-felons who have completed their sentences.

## **The States and Felon Disenfranchisement**

Two states, Maine and Vermont, permit all prisoners, including felons, to vote while in prison. Thirty states and the District of Columbia automatically restore the voting rights of convicted felons, though the restoration takes effect at different stages of punishment. Of these 31 jurisdictions, 12 grant automatic restoration once the felon is no longer incarcerated and nineteen grant automatic restoration after the sentence, probation and parole are all complete (although three of these do not remove voting rights from convicted felons who only are sentenced to probation). Some also require repayment of financial debts as a condition to reinstatement of voting rights.<sup>85</sup>

Automatic restoration requires the voter to do nothing more than re-register to vote. However, as we heard at our Los Angeles hearing, many ex-felons are unaware that their voting rights may be restored by simply re-registering to vote.

In two states, the court system is required to submit documentation to election officials when a felon is legally permitted to vote again. There is no burden on the voter to do anything else. In the remaining 16 states, laws concerning the restoration of voting and civil rights are stricter. In eight of these states, a pardon or certificate of restoration from the Governor is required (although this can be bypassed in Mississippi with a 2/3 vote of the legislature). The other eight states require some or all felons to apply for restoration by going before a Parole Board or Clemency Board, preparing a written application or requesting rights from a judge.

According to 1998 figures, there are 2,051,400 felons who have completed their sentences (1,391,100 of whom also are no longer on parole or probation) and have not had their right to vote automatically restored. Of the 2,051,400, 1,539,800 will not have their civil and voting rights restored until they receive a pardon or restoration from their state's governor. Florida leads the nation in disenfranchised felons who are no longer incarcerated (583,400) with Texas close behind (477,600). These two states represent 51.72% of all felons not granted automatic restoration.<sup>86</sup> Both states currently require applications to their governors for restoration of voting rights.

In Florida, most felons must have a hearing in front of the state's Clemency Board, which is comprised of the Governor and his Cabinet, for restoration of their civil and voting rights. Florida's Governor Jeb Bush recently proposed a plan that would allow certain ex-felons, those not convicted of serious offenses, to have their civil rights restored without a hearing. This option is currently available for a limited number of ex-felons.

## **Information Dissemination**

Even those states that automatically return ex-felons to the voting rolls vary in the amount of information they provide to ex-felons. Several, including Mississippi, Montana and Oregon, do not require parole officers or other prison officials to discuss voting or other civil rights with those in their charge. According to Earl Coleman of the Indiana Parole Board, "If we tell them one thing, we have to tell them a lot."<sup>87</sup> Oregon now has a policy in place requiring release counselors to discuss the procedures with individuals when they have completed their sentence, but this policy was only

adopted this year.

Some states, including Connecticut, have materials discussing the restoration of voting and other civil rights in parole offices. Connecticut, along with Louisiana and other states, includes information on restoration of voting and civil rights in materials distributed either prior to release or during supervision. The Committee believes the dissemination of information regarding voting rights through parole officers and in release paperwork will ensure the assimilation of these individuals back into mainstream society.

### **Federal Felony Convictions**

State laws also vary on whether voters convicted of federal felonies can have their rights restored in the state or must contact the federal government. For example, Nevada requires federal felons to contact the United States Department of Justice to have their voting rights restored. Most other states, however, have the same laws for felons convicted on state and federal offenses. There is no federal law on when felons who have committed a federal offense are to regain their voting rights - this decision has been left to the states.

### **Interstate Issues**

The “Full Faith and Credit Clause” at Article IV, Section 1 of the United States Constitution requires that each state respect the fact that an ex-felon has had his or her voting rights restored in another state. States cannot deny a convicted felon the right to vote if his or her rights already have been restored by another state.

According to individual reports and at least two court cases, this was not the case in Florida. Despite court rulings to the contrary, Governor Bush’s office still demanded the removal of out-of-state felons who had their civil rights restored prior to moving to Florida. Additionally, in a letter obtained by *The Nation* from the Governor’s Office of Executive Clemency, dated September 18, 2000, county officials were told that if these voters tried to register in Florida, they were to be told they had to apply for restoration of their civil rights again in Florida.<sup>88</sup>

### **Recommendations**

1. Individuals convicted of felonies should be eligible to vote once they have completed their sentences, including any term of parole and probation.
2. In order to encourage former felons to assimilate into mainstream society, each state should develop a procedure for restoring the voting rights of ex-felons by a simple notification and re-registration process that should become a part of all release procedures, with election officials, prison officials and parole boards working together to develop these programs.

## Military Voting

*“When our young people are defending our country and its free institutions, the least we could do is make sure that they are able to vote and enjoy the rights they are being asked to fight to preserve.”*

- Major General Richard Murray, Philadelphia Hearing

Since 1952, there have been concerns about the ability of overseas military personnel to vote in elections stateside. At that time, America was involved in the Korean War and military personnel were concerned they would not be able to participate in the 1954 elections. President Truman ordered Congress to draft temporary legislation to ensure military personnel serving overseas would be able to vote, but no permanent actions were taken at that time to address the concerns of military personnel. Legislation was subsequently enacted; however, there is no uniformity of laws pertaining to military voting, and no guarantee that all military votes are being counted.

### **Uniform and Overseas Citizens Absentee Voting Act & Federal Voting Assistance Program**

The Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) sets forth procedures for overseas civilians and military personnel to vote in U.S. elections. The Act was adopted in 1986 and affects more than six million voters, including members of the Uniformed Services and Merchant Marines, Commissioned Corps of the Public Health Service, Commissioned Corps of the National Oceanic and Atmospheric Administration, U.S. citizens employed by the federal government residing outside the U.S., eligible family members, and all other private U.S. citizens residing outside the U.S.<sup>89</sup> The Secretary of Defense is responsible for the Act’s implementation, and the Federal Voting Assistance Program (FVAP) was created by the Act to educate U.S. citizens worldwide of their right to vote and facilitate participation.<sup>90</sup>

Commanding Officers appoint Voting Assistance Officers (VAOs) to assist military voters with processing their registration materials, ballot applications and final ballots.<sup>91</sup> There are roughly 70,000 VAOs stationed worldwide.<sup>92</sup>

Predominantly, overseas personnel register to vote and request an absentee ballot through the Federal Post Card Application (FPCA), though they can also use their state’s absentee ballot application forms. Voters who use the FPCA must conform to state deadlines for registration and ballot submission. Some states permit overseas voters to submit one absentee ballot application for both primary and general elections. Each state and territory must accept the FPCA.

There is also a federal back-up absentee ballot available if a voter does not receive his or her absentee ballot from the state of residence in time to participate. This ballot is used for only federal elections.<sup>93</sup> VAOs are responsible for keeping track of state and federal elections and for informing overseas military personnel of the registration and application deadlines in each state. The Department of Defense assists VAOs and overseas voters with newsletters, pamphlets, automated telephone systems and on-line training programs.<sup>94</sup>

The Secretary of Defense is responsible for reporting to the President and Congress after every Presidential election on the administration and statistics of FVAP. The 2000 report is not yet available, but information from the 1996 report indicates that:<sup>95</sup>

- ▶ The total voting participation rate among Uniformed Services personnel living in the U.S. and abroad was 64% in 1996, including those voting absentee and in person. By comparison, the general public's participation was 49%;
- ▶ Citizens covered under the UOCAVA comprised 3% of the total votes cast in 1996; and
- ▶ In the 1996 general election, 71% of Uniformed Service members used the Federal Post Card Application for registering to vote and applying for an absentee ballot.

### **Uncounted Military Ballots**

In Florida, 4,017 military personnel cast absentee ballots in the November election.<sup>96</sup> Of the 4,017 ballots cast, 1,527 were not counted due to lack of voter registration, an untimely absentee ballot application, or the lack of a postmark or witness signature, as required by Florida law.<sup>97</sup> This amounted to almost 38% of ballots cast by Florida's overseas military personnel.

Former Assistant Secretary of Defense Kenneth Bacon expressed concerns pertaining to discarded military ballots that lack postmarks. At a press briefing after the November 2000 election, he stated that military ballots are mailed postage free (and therefore don't need postmarks), and that it is often difficult to obtain these marks in remote parts of the world, especially for voters on ships at sea.

A 1982 Consent Decree requires Florida election officials to count military ballots which are received up to ten days after an election. Between November 8 and November 17, 2000, more than 3,700 overseas ballots were received.<sup>98</sup> Other states do not have such provisions. There have been reports that Republicans took advantage of this law by canvassing military votes after Election Day, enabling them to return ballots by the November 17<sup>th</sup> deadline.<sup>99</sup>

In addition, Republican operatives filed suit against 15 Florida counties requiring them to count overseas ballots which had been thrown out for non-compliance with the rules. A *New York Times* investigative study found how easy it was for the laws of Florida to be manipulated.<sup>100</sup> The article noted that representatives of the Bush campaign lobbied Republican election officials to ignore laws governing the receipt of military ballots and count every last vote. The article concluded that 2,490 overseas ballots were counted after Election Day, 680 of which were questionable.

Florida recently addressed the voting rights of overseas military personnel in its new election reform legislation. Previous laws required all ballots to be postmarked prior to Election Day. The new law permits ballots to be counted if there is no postmark, as long as it contains a witness signature on the envelope dated before Election Day.

## **Department of Defense Audit of Overseas Absentee Voting**

The United States Department of Defense conducted a survey following the November 2000 election involving 1,267 voters, showing that election participation (75%) was higher than in the November 1996 election.<sup>101</sup> Importantly, the survey showed that one in three overseas voters was confused by the system. In response, DOD made the following recommendations:

- ▶ Ensure more effective oversight of FVAP;
- ▶ Encourage voter participation and increase voter understanding of the absentee ballot process;
- ▶ Ensure that unique issues related to Navy ships and remotely deployed unit operations are addressed in a timely manner, when possible; and
- ▶ Continue to work with the States to resolve or focus attention on issues, feedback to voters and increased use of technology.

## **Internet Voting**

The Department of Defense recommendations did not pertain to use of internet voting for military personnel. However, the Department conducted an internet voting experiment for overseas voters in four counties and the State of South Carolina during the November 2000 election. The participating counties were Dallas County, Texas; Weber County, Utah; and Orange and Okaloosa counties in Florida. A total of 84 volunteers, most of them in the military, participated in the experiment, which included registering to vote online and requesting and filing absentee ballots. The project totaled \$6.2 million, or \$74,000 per volunteer, and raised concerns about security and cost.<sup>102</sup>

The report concluded that internet voting is in fact more secure than the regular absentee voting system, and that counting procedures were dramatically shortened with the system.<sup>103</sup> Defense Department officials would like to see the experiment expanded to three or four states in 2004, and recommend further research into the implementation of internet voting and registration systems for military and overseas voters. In fact, Senator Bill Nelson has introduced legislation enabling overseas military personnel to vote via internet. There is also additional legislation in Congress pertaining to internet voting for military personnel.

## **Improving the System**

The FVAP made the following suggestions for improving the voting process for those falling under the UOCAVA:<sup>104</sup>

- ▶ A minimum of 45 days between the date the ballot is mailed out to the voter and the due date by which the voter must return the voted ballot to the local election official;
- ▶ Use of one FPCA for all elections in a calendar year;
- ▶ Elimination of notary requirements;
- ▶ Elimination of the “Not Earlier Than” requirement for acceptance of absentee ballots;
- ▶ Allow discharged service members more leniency when registering to vote upon returning

- from overseas, even allowing them to register on Election Day;
- ▶ Permit state write-in ballots from those who may not receive state absentee ballots (submariners, Peace Corps Volunteers, missionaries, etc.);
- ▶ Electronic transmission of election materials via fax;
- ▶ Emergency authority for election officials in emergency situations to ensure overseas absentees are counted;
- ▶ Expand use of Federal Write-In Absentee Ballots to more than federal elections so those who do not receive their state absentee ballots in a timely manner can use this format to cast their vote; and
- ▶ Enfranchise the more than 50,000 U.S. citizens who have never resided in the U.S., and are thus not eligible to vote.

At the Committee's Philadelphia hearing, Major General Richard Murray stressed that standard regulations among the states would increase the ability of military personnel to participate in the electoral process. This would include standard receipt dates, validation procedures and application deadlines. He noted that the Department of Defense is working with the states to streamline their regulations in hopes of meeting this goal. Major General Murray also indicated that most military personnel would be favorably disposed to internet voting.

### **Recommendations**

1. The return of absentee ballots by uniformed personnel and overseas citizens should be standardized, regardless of the voter's state of residence. This standardization should include postmark requirements, method of return, signature requirements and submission deadlines.
2. The Department of Defense should work closely with the states to develop a streamlined system for overseas citizens and military personnel to register to vote, apply for and receive absentee ballots.
3. Overseas voters should be allowed to indicate on their initial absentee ballot application for each calendar year that they request absentee ballots for both the primary and general elections, and States should automatically send out absentee ballots to those voters for the general election after receiving this notification.
4. Notary requirements should be eliminated. The "Not Earlier Than" requirement should be eliminated – some states will not accept absentee ballots if they are mailed in too early.
5. The use of Federal Write-In Absentee Ballots should be extended beyond federal elections.



## Alternative Voting Methods

*“We had to file a lawsuit against Bexar County because in 1998 they denied early voting locations in our minority communities, saying it would cost too much money, at the same time they were placing them in non-minority communities.”*

- Tommy Calvert, San Antonio Hearing

With turnout rates decreasing to historically low levels, attention has been given to alternative voting methods which would offer voters more opportunities to participate in the voting process. Several alternative voting methods have been implemented at the state and local levels, to mixed results.

The most popular alternative systems being proposed are making Election Day a national holiday for presidential elections, early voting periods and conducting weekend voting. These have been utilized in some local jurisdictions, but neither appear to dramatically improve turnout. Oregon has adopted an all vote-by-mail system, which was utilized in the 2000 Presidential election. Oregon’s system has been the subject of several studies, some of which have concluded that turnout has increased while others have reported the contrary. Some jurisdictions have implemented early voting at satellite locations, which thus far has been utilized by only a small percentage of voters. Each system comes with pros and cons, which we have closely examined.

The National Commission on Federal Election Reform recently endorsed creating a national holiday for presidential elections, but strongly objected to absentee voting, early voting and vote-by-mail procedures. The Commission felt that these methods pose a threat to the institution of Election Day. The CalTech/MIT report strongly opposed absentee and early voting, citing coercion, fraud and security concerns. The Election Center, an organization comprised of the nation’s election administrators, endorses extended voting periods and weekend voting, citing the conveniences these options offer for voters. We support options that provide voters with more opportunities to cast their ballots, including early voting systems and laws that provide time off for voting.

### **Voting by Mail**

Voting by mail (VBM) has become increasingly popular in local elections, and is being utilized in all elections in Oregon, including those for federal office.

#### ***The Oregon Experience***

Oregon is the most widely cited example of the vote-by-mail system. The state first tested VBM in 1981 in local elections, and was the first state to elect a federal official through VBM in a U.S. Senate special election.<sup>105</sup> The November 2000 elections were conducted entirely by mail in the state, and turnout reached 79.8% of registered voters.<sup>106</sup> In Oregon, ballots are automatically mailed to all registered voters. They may not be forwarded to a forwarding address, and those returned from the post office are set aside for further contact with the voter to verify eligibility and address information. Voters who return completed

ballots are responsible for their own postage. Authenticity is ensured by matching the voter's signature, which is required on the outside of the envelope, with voter registration records. Ballots are not counted until Election Day.<sup>107</sup>

In a poll performed by the University of Oregon, 76.5% of respondents preferred voting by mail, and fewer than 1% of voters felt they were pressured to vote a certain way.<sup>108</sup>

Another study of Oregon voters conducted by the University of Michigan found similar results. More than half of the survey's 1,500 respondents preferred voting by mail; all but 1% marked their ballots themselves; and two-thirds said they were alone when they voted.<sup>109</sup>

While Oregon is the only state to use VBM for all elections, several localities have used the system to some degree. Municipalities with smaller populations in Washington, Minnesota, Missouri and North Dakota use VBM for primary and local elections and for approving or disapproving an issue. California was the site of the nation's first all-VBM system in 1977, with a vote on a flood control measure in Monterey County. The City of San Diego used VBM for a measure concerning the construction of a \$224 million convention center in 1981.<sup>110</sup>

Turnout in all jurisdictions which have utilized VBM has increased for those elections. However, some question whether that will be the case over the long haul, once publicity fades and the novelty of voting by mail wears off. Conducting VBM elections saves money, with no poll workers or polling places needed. However, there are additional costs related to VBM, specifically postage and printing.

Fraud is a concern with VBM. While this system requires signature verification, there is still the potential that fraudulent signatures and, thus, fraudulently cast ballots, will be entered into the count. Another concern is the influence of third parties on voters as they cast their ballots. This is of special concern when it comes to physically challenged and elderly voters who are in care facilities.

Some have concluded that VBM could also increase campaign costs, as candidates must direct their efforts throughout the entire voting period rather than focusing simply on Election Day.<sup>111</sup>

### **Weekend Voting**

Weekend voting has also received support as a way to make voting more convenient, enabling voters to vote on days when they don't have to work or pick up and drop off their children at school. Senator Harry Reid recently introduced legislation (S. 241) to spread Election Day over a weekend. Congressman Alcee Hastings (FL-23) recently introduced legislation (H.R.2758) moving general federal elections to the first consecutive Saturday and Sunday in November.

### ***The Louisiana Experience***

Louisiana has held some elections on Saturdays since 1959, when gubernatorial primaries were moved to Saturdays. In 1975, with the adoption of a new state Constitution the previous

year, gubernatorial primary and general elections were moved to Saturday, as were all other statewide and local races. Only elections which coincide with federal elections are held on Tuesdays. Among the reasons for moving elections to Saturdays, officials cited convenience to voters with time restrictions during the week, and increased accessibility to polling places on Saturday (with many polling places located in schools, the precincts tended to be in high-traffic areas).

However, turnout in Louisiana elections hasn't seemed to increase as a result of Saturday elections. The October 1999 gubernatorial election, held on a Saturday, produced a 48.8% turnout.<sup>112</sup> This compares with gubernatorial elections held on Tuesday in similar jurisdictions. In Alabama, which has similar population figures and registered voters, a 1998 Tuesday gubernatorial and congressional election actually had higher turnout (57%) than the 1999 Saturday Louisiana gubernatorial election.<sup>113</sup> While there may be other variables affecting turnout in these races, a turnout of less than 50% in a governor's race signifies that the state's system of weekend voting has not had a substantially positive effect on turnout.

Statistics do not seem to support increased voter participation on weekends. In many ways, people's lives are just as busy on weekends as during the week, just in different ways. Or they may simply want to relax on the weekend without having one more obligation. An additional concern with weekend voting is that, regardless of the day, the election will fall on a religious day of worship for somebody, thus disenfranchising voters of certain faiths.

### **Election Day as a National Holiday**

Several groups have endorsed a National Election Day Holiday as a way to increase voter participation. Congresswoman Sheila Jackson Lee has introduced legislation (H.R. 934) that would create a National Election Day on the second Tuesday of November in presidential election years. A number of organizations, including the National Commission on Federal Election Reform, have proposed a plan for moving Veterans Day to coincide with Election Day, thereby creating a national holiday without increasing the burden on employers.

The National Commission's plan goes beyond merging Veteran's Day with Election Day every four years. The Commission supports moving Veterans Day to the Tuesday after the first Monday in November in *all* even-numbered years, so that all federal elections are held on a national holiday. The Commission stressed in its report that this would increase the availability of poll workers and increase access to public buildings that could serve as polling places. Moreover, the Commission concluded this would not increase the financial burden on employers, as they have already assumed the cost of a national holiday with Veterans Day.

President Clinton came out in favor of a national Election Day holiday just before he left office, stating, "We should declare Election Day a national holiday so that no one has to choose between their responsibilities at work and their responsibilities as a citizen. In other countries that do this, voter participation dwarfs ours, and the most fundamental act of democracy gets the attention it deserves."<sup>114</sup>

The idea of an Election Day holiday is supported by many labor unions. The United Auto Workers (UAW) negotiated an Election Day holiday in 2000 and 2002 into their collective bargaining agreements for all represented workers of several automobile companies, including Ford, Daimler Chrysler, and General Motors. Many of UAW's members used Election Day in 2000 to help on GOTV efforts and to cast their own ballots.<sup>115</sup>

The idea of an Election Day holiday also has its critics. Several cite the likelihood that voters will use the holiday to take a four-day weekend. As a consequence, not only will these votes be lost, but they will nullify the new votes of those who may not otherwise have made the time to vote.<sup>116</sup> Others are skeptical that voters will use such a holiday to vote even if they do not take a vacation. The Election Center's Executive Director, R. Doug Lewis is opposed to the idea, stating, "most people would use the day to play golf, do shopping or do chores."<sup>117</sup>

Those in the business community are opposed to making Election Day a separate holiday from Veterans' Day because of the cost of paid holidays for employees and the potential for lost business. Currently, not all private sector employers offer Veterans Day as a day off to their employees. Finally, many Veterans' groups are opposed to the idea of using Veterans Day as a voting day because they feel it will diminish the importance of the holiday. The American Legion and the Veterans of Foreign Wars have already come out against the proposal.<sup>118</sup>

We are skeptical that a National Holiday will increase turnout and the availability of poll workers. We believe, as others have stated, that voters and poll workers would use the day off to tend to other chores or go on vacation. Moreover, we understand the concerns of Veterans' groups who do not want to diminish the importance of their holiday. We believe that another alternative, time off for voting (which we discuss next), provides a more satisfactory alternative for giving voters time to vote while not placing an undue burden on employers.

### **Time Off for Voting**

There is no federal law allowing employees to request time off with pay to go to the polls on Election Day. This is another area that so far has been left up to the states to regulate, with a resulting hodge-podge of laws.

Twenty states and the District of Columbia do not have any provision for requiring employers to give time off. Another four states require employers to offer time off for voting, but do not require them to pay employees. The remaining 23 states have varying laws on the matter.<sup>119</sup>

Oklahoma requires employers to give time off with pay only if employees request it in writing or orally at least one day before Election Day. Employees may then have two hours off, or more if it they can prove it necessary. Also, in Oklahoma, the employer has the right to decide at what point of the day the employee can go vote, and can alter their schedule depending on the request. An employer can also require proof of voting.

California has a similar rule for statewide elections. California requires public and private employers to give employees as much time as needed to vote, but only up to two hours must be paid. Employers may also require employees to vote at the beginning or end of a shift. Employees are required to give two days advance notice of the request for time off, unless they were unaware of the need to do so at the time. California also requires that employers post the state law in a place where it is visible to employees.

Some unions have negotiated time off for voting provisions in their collective bargaining agreements, particularly in the case of government employees.

The Committee highly favors this approach as a means for increasing voter turnout, while minimizing the burden on employers. We urge Congress to enact legislation permitting federal employees to take up to two hours of paid time off to vote in all federal elections, and recommend that states and local jurisdictions enact similar legislation providing public and private employees with paid leave on Election Day if necessary to vote in all elections.

### **Early Voting Systems**

Several localities have experimented with early voting at government buildings, shopping centers and other public places in the days and weeks preceding an election as a way to offer more options to voters.

In many jurisdictions, however, these early voting opportunities are not available in all communities. In Los Angeles County during the November 2000 election, touch screen voting was offered at early voting locations. In nine public buildings, touch screen voting machines were set up for the 22 days prior to November 7<sup>th</sup>. Each location had between 4 and 6 machines.<sup>120</sup> In the election, 21,963 Los Angeles County voters took advantage of the early voting period.<sup>121</sup>

In Clark County, Nevada, early voting is an option from 17 days to 14 days prior to Election Day.<sup>122</sup> In the November 2000 election, the County offered seven locations where voters could go to cast their ballots before Election Day and also had six traveling units stationed at 46 sites throughout the County for several days during the early voting period. These locations included recreation centers, supermarkets and libraries. The sites are staffed and signatures are verified before the person is allowed to vote. In the November election, 167,522 Clark County voters voted early. Remarkably, this number slightly exceeded the number of voters who went to the polls on Election Day – 167,317.

Texas has used extended voting periods for some time.<sup>123</sup> Texas offers early voting in most elections, from the 17<sup>th</sup> day prior to the election through the 4<sup>th</sup> day prior. For elections to fill state legislative vacancies and run-off primary elections, the period is from the 10<sup>th</sup> to the 4<sup>th</sup> day prior. Combined with absentee votes cast (the state does not have open absentee voting), a total of 38.85% of votes cast in the November 2000 election in Texas were done before Election Day. The CalTech/MIT report concludes that early voting has not affected turnout in Texas, arguing that in every presidential election year since the state has offered early voting, turnout has increased, but at a lower rate than

the national average.<sup>124</sup>

Studies have shown that early voting does not necessarily increase voter turnout. However, it does provide a convenience to voters, and, for that reason, we support its implementation as long as it is made available to voters in all communities.

### **Recommendations**

1. Jurisdictions are encouraged to develop alternative voting methods that make voting easier and more convenient for citizens of all communities.
2. Congress should enact legislation providing federal employees with up to two hours of time off with pay to vote in federal elections. States should adopt similar laws allowing public and private employees to receive time off with pay to vote.

# **The Polling Place Experience**





## Polling Place Facilities

*“There is a lack of communication networks at polling places and no way for poll workers to get in touch with administrators. Some polling places are in houses and you can’t use their phones.”*

- Kevin Acebo, Los Angeles Hearing

Voting is a ritual that has been shared by Americans since the birth of our Nation. Election Day is a time for all of us to celebrate our democracy and play a part in our system of governance. For many Americans, Election Day represents the struggles that have been waged for freedom and serves as a way to honor those who came before them and fought for the right to vote. For new citizens, Election Day is a symbol of the freedom they discovered when they came to America.

Unfortunately, Election Day has become an ordeal for some and an inconvenience for others. The U.S. Census Bureau conducted a survey of non-voters following the November 2000 election asking them why they chose not to vote. The top responses were as follows:<sup>125</sup>

Too busy, conflicting work or school schedule	22.6%
Illness or disability	16.0%
Not interested, felt my vote wouldn’t matter	13.2%
Out of town or away from home	11.0%
Didn’t like candidates or campaign issues	8.3%
Registration problems	7.4%
Forgot	4.3%
Inconvenient polling place or hours, or lines too long	2.8%
Transportation problems	2.6%
Bad weather conditions	0.7%

This means that almost half those surveyed chose not to vote because of logistical, scheduling or transportation concerns. Only about 25% of non-voters said they did not participate because of disinterest.

We believe that more people would be inclined to participate in elections if government provided a system where polling places were conveniently located, people felt welcome entering the polling place, and voting was easy. Polling places should be inviting, not intimidating. If voting were a more pleasant experience, people would feel better about their democracy and be more inclined to exercise their right to vote. Government needs to address the infrastructure of our election system as it would the infrastructure of our streets and highways.

Every election, we hear of voters who were unable to vote or were frustrated because of inaccessible polling places, polls that opened late or closed early, polling places that were consolidated or moved from one location to another, lack of adequate parking, having to wait in long lines and registration

or supply problems that go unresolved because of a lack of communication networks.

No citizen should be denied the opportunity to vote simply because he couldn't walk up some stairs or because she couldn't find a parking space. We need to be innovative when it comes to the selection and management of polling places. Also, polling places must be equipped with modern communication devices so that poll workers can communicate with election officials, access voter registration information and resolve issues that arise at the polls.

### **Polling Place Selection**

The CalTech/MIT report estimates that there are approximately 200,000 polling places nationwide staffed by approximately 700,000 temporary employees on Election Day.<sup>126</sup> Los Angeles County alone services 4,963 polling places each county-wide election.

Thus far, it appears little attention has been paid to the criteria for selecting polling places. Historically, polling places have been located in churches, private residences, businesses and schools, libraries, and other public buildings.

We appreciate the dilemma facing most election officials in trying to identify adequate polling places. However, many of the polling places historically relied upon by election officials are no longer appropriate polling locations. Private homes are often hard to locate and are not always accessible to voters without transportation or elderly and disabled voters. Moreover, some residences may be intimidating to voters with certain sensitivities. Polling places in gated communities, for example, are particularly intimidating to voters who don't live there and are not easily accessible. Private residences also may not be equipped to provide access to modern communication devices, particularly if voting takes place in the garage.

Polling places in private residences are further subject to the whims of occupants. A quick change in the owner's plans might impact the voting rights of 1,000 people. In the recent Los Angeles Mayoral election, approximately 10 polling places were changed days before the election, due mostly to homeowners whose plans changed. These changes left roughly 10,000 voters scrambling to find their new polling location, as no notice had been mailed to them and several of these locations had no signs posted alerting them of where they were supposed to go to vote.

For these reasons, we strongly recommend that private homes not be used as polling places. We recognize that this may be impractical or impossible in some areas, particularly rural areas. In those instances, we urge local election officials to select homes that satisfy the needs discussed here or develop temporary voting facilities that have wireless communication devices.

Schools also have become problematic. School officials are increasingly wary of hosting polling places because of liability issues and student security concerns. Schools also may present conflicts throughout the day. At our Los Angeles hearing, a poll worker described the disruptions caused by a school choir rehearsing in a room adjacent to the polls.

Another issue of concern is enlargement, consolidation and elimination of precincts. In some districts, where adequate facilities are scarce, election officials have turned to enlarging precincts, sending more voters to a single polling place; consolidated precincts, housing two or even three precincts in one polling location; and eliminating polling places altogether in precincts with few registered voters, thereby creating all vote-by-mail precincts.

Many consolidated precincts are understaffed and overwhelmed. Having more than one precinct in a single polling location confuses voters, who often leave rather than wait in numerous lines to ask for assistance. Of course, adequate signage could take care of this. Thus, if polling places with multiple precincts are necessary, they must have signs clearly indicating where voters are supposed to go.

In an effort to make voting more convenient and responsive to the needs of all voters, we suggest a new way of thinking regarding the selection of polling places. Rather than trying to figure out how we can adapt existing locations to meet all of the needs of voters, we suggest creating polling places that meet these needs and then finding appropriate locations for them in the community.

More public places should be considered as polling places. Malls, shopping centers, banks and grocery stores tend to be centrally located, and easily accessible to the elderly and disabled. They are located near public transportation lines, and are generally convenient to people going to and from work or school. Most have substantial parking facilities. They generally don't move, and none close down when the owner goes on vacation.

We envision a system in which government and the business community can work together to ensure the delivery of more efficient election services to our citizens. Polling places can be located inside these businesses or in an area of the parking facility. Election officials can develop transportable structures that can be set up and then taken down and stored between elections. Permanent polling place relationships can be developed with local businesses so that voters know exactly where to go every election.

### **Modernizing Polling Places**

In addition to selecting appropriate polling place locations, we must make sure polling place facilities are equipped to handle the many problems which inevitably arise on Election Day. We are surprised to learn that in today's information age, a vast majority of polling places do not have sufficient communication networks to deal with issues that arise on Election Day. Most, in fact, do not even have telephones.

We have heard story after story of registration problems, equipment breakdowns, staffing shortages and depleted materials that went unresolved throughout the day simply because poll workers did not have the means to contact election officials at a central location. Even when phones are available, poll workers and community organizers constantly complain that election officials have an insufficient number of phone lines available on Election Day to help resolve problems, resulting in constant busy signals and problems that perpetuate themselves throughout the day.

We would all be better served if poll workers had the ability to call election officials directly for assistance if a problem arises. Too many times partisan observers are relied upon to contact election officials on behalf of voters who are being denied the right to vote. Polling places should have phone lines available or, if that is not possible, poll captains at each polling place should be given cell phones as part of the standard operating equipment.

Moreover, polling places should be equipped with access to voter registration files to resolve registration issues at the precinct. Laptop computers should be provided to each polling place, with the entire voter database loaded onto it or with the capability to dial-in to a voter registration database. This information, combined with increased usage of provisional ballots as described elsewhere in this report, will speed up the process and reduce the number of disenfranchised voters at the polls.

### **Voter Information**

Voters should be given adequate directions to the polling place and instruction on how to familiarize themselves with the voting process.

As discussed elsewhere, sample ballots should be sent to all registered voters listing the location of their polling place. Election officials should offer information to voters on how to locate polling places via the internet or by telephone. If polling places are relocated at the last minute, election officials should make every effort to notify voters by expedited mail delivery. In addition, signs should be posted and, if necessary, personnel should be stationed at the old polling location directing people to the new voting location. Directions for public transportation should be available as well.

In addition, parking facilities should be clearly marked, and arrangements should be made with parking enforcement personnel to ensure that accommodations are made on Election Day.

Once inside the polling place, signs should direct voters to the appropriate tables, and instructional information should be available for voters to familiarize themselves with the voting process. These materials should be available in all languages required by the Voting Rights Act in a particular jurisdiction. Signs should be posted in each ballot booth with simple drawings and clear explanations in multiple languages on how to operate the voting equipment.

### **Recommendations**

1. Election officials should use a new approach to selecting polling places. Polling places should be centrally located, easily accessible to elderly and disabled voters, located near public transportation, built with adequate parking, and convenient to people heading to and from work or school. Local jurisdictions should work with the business community to house polling places in permanent locations that meet the aforementioned criteria. Private residences should be avoided.

2. Polling places should be equipped with modern communication devices so that problems which inevitably arise at the polls can be dealt with swiftly. All polling places should have phone lines or cell phones and laptop computers with voter registration databases or internet access to centralized voter registration databases.
3. Sample ballots should be sent to all registered voters prior to the election with the location of their polling place identified.
4. Signs should be posted at the polling place in all languages subject to the Voting Rights Act in that jurisdiction to direct voters to the polling place and to provide instructions to voters on how to use the voting equipment once inside the polling place.
5. Posters should be hung in each ballot booth with visual examples of how to operate the voting equipment.

## Poll Workers

*“Here in Pennsylvania, when our election officials go for training, they get a mere five dollars for the day to go to training. It’s hard to convince people to come down for that amount of money, and they don’t have to by law.”*

- Andrew Dinniman, Philadelphia Hearing

Most poll workers are well-intentioned people who are performing their civic duty. In most jurisdictions, poll workers volunteer or serve for minimal pay on Election Day. They are required to work long hours, usually starting around 6:30 a.m. to set up the polls and finishing around 8:30 or 9:00 p.m. after closing down the polls. The lack of substantial pay and the long hours dissuade many people from serving as poll workers. Historically, poll workers have been retired or elderly citizens who have the time available to perform these civic duties.

Poll workers also receive little to no training prior to serving and, of the jurisdictions that provide formal training, few make it mandatory to attend. Without adequate knowledge of the election process, many poll workers are ill-equipped to handle the vast array of Election Day issues, through no fault of their own.

Poll workers are the human face on our election system. A voter’s entire experience may rest on the quality of the poll workers assigned to that voter’s precinct. Obviously, the quality of the poll worker is subject to great variations, and an uninformed poll worker may singlehandedly deprive many voters of their right to vote. Therefore, it is imperative that we explore new options for selecting and training our poll workers. Among our suggestions are increasing the pool of available poll workers, providing incentives for people to serve as poll workers, providing adequate training to poll workers and “professionalizing” polling place supervisors.

### Poll Worker Recruitment

Election officials around the country are finding it increasingly difficult to recruit poll workers on Election Day. As people’s lives become busier and more people are entering the workforce, temporary poll workers are becoming harder to find. Retired or elderly citizens who have been working the polls for years find it increasingly difficult to work the long hours, and even this group is shrinking as people remain employed beyond retirement age and more women enter the workforce. Those who do choose to work the polls one year are not guaranteed to return the next. This has caused significant problems for election officials, as has the need for bilingual poll workers in jurisdictions with language minorities.

Many jurisdictions are looking for new ways to recruit poll workers, and we encourage them to do so. Douglas County, Nebraska, has gone so far as to draft election workers the same way jurors are drafted.<sup>127</sup> Other groups have suggested giving citizens the option of serving as poll workers as credit toward jury service.

Several jurisdictions have developed programs for recruiting high school and college students as poll workers, offering them extra credit or even making service a requirement. This would seem particularly appropriate in high school civics classes or college courses on government - what better way for students to learn about the system than to experience it first-hand. In California, San Bernardino County runs a program with local high school students who work the polls on Election Day. Participating students receive class credit and are also paid the same as other poll workers. Some high schools count the time toward community service requirements. In order to serve in San Bernardino County, a student must be 16, in the 12<sup>th</sup> grade and have a 2.5 GPA. This option is appealing as it not only brings bright young workers into a depleting pool, but it also introduces new and soon-to-be voters to the election process.

Los Angeles County has a program which permits high school juniors and seniors who have a B average or higher and the support of their teacher to serve as poll workers. At the Los Angeles hearing, we heard from Laura Camberos, a high school student who participated in this program and spoke of the benefits she and her classmates got out of the experience. She noted that the hours were long, but she would serve again. She also said that she and her classmates gained a realization of the importance of voting from their work, and that she looks forward to voting when she turns 18.

Many jurisdictions require poll workers to be over the age of 18 and a resident of the county or municipality conducting the election to serve. Limitations like these restrict the ability of election officials to look to this resource for much needed assistance on Election Day. We urge states and local jurisdictions to consider eliminating these requirements as a means of increasing the pool of available Election Day workers.

Congressman Hoyer has proposed a program, Help America Vote, which would provide funding to colleges and community colleges to recruit and train students to serve as poll workers. Under this program, grants would be administered to the schools to organize the program. This program also enables students to receive college credit for their service.

Another source of poll workers is public employees, on the federal, state and local levels. The Hoyer-Price Voting Improvement Act (H.R. 775) offers federal employees the opportunity to take Election Day off to serve as voluntary non-partisan poll workers on the day of any general election for federal office. Under that plan, federal workers would receive their normal day's pay and not lose any vacation time, but would not receive compensation for serving as poll workers.

The County of Los Angeles and the City of Los Angeles have implemented similar programs in which County and City employees are recruited to serve as poll workers on Election Day with no loss of pay or vacation time. Under these programs, public employees are given standard poll worker compensation *in addition to* their regular pay. This gives added incentive to public employees to serve as poll workers, even though they work substantially longer hours than a normal workday. Programs that encourage public employees to serve as election workers are outstanding. States and other local jurisdictions around the country should consider adopting these types of programs for their employees.

These opportunities also should be explored in the private sector. This is another appealing option for obtaining intelligent, qualified poll workers. We would like to see private employers incorporate a program into their policies on employee time off for poll workers similar to time off for jury service. States and local jurisdictions are encouraged to explore such programs with local businesses, and consider incentives for employers who participate.

Finally, as with time off for voting, another opportunity to increase the number of poll workers is for public and private sector unions to negotiate provisions in their collective bargaining agreements providing their members time off with pay to serve as poll workers on Election Day. Again, local election officials should work with both labor and industry to impress upon them the need for Election Day assistance.

### **Poll Worker Pay and Working Hours**

Of course, another way to provide incentives for people to serve as poll workers is to increase their rate of pay and provide a more humane work schedule.

Most states pay anywhere between \$50 and \$150 a day for roughly 12 to 15 hours of work. Most polls are open from 7:00 a.m. to 8:00 p.m. Workers are generally required to be at the polls a half hour before they open and a half hour to an hour after they close. Delaware poll workers must report at 6:00 a.m. to have the polls ready for voters at 7:00 a.m and must stay until all ballots in their precinct are counted. The average poll worker makes \$110 per day, or approximately \$7.33 per hour, for their time. Supervisors make up to \$155 a day. New Jersey recently increased poll worker compensation from \$75 a day to up to \$150 (counties set their rate); a Wisconsin county pays poll workers \$100 and judges (who are each precinct's head poll worker) \$120.

Some jurisdictions are already responding with proposals to increase poll worker compensation. In Sullivan County, Tennessee, Commissioners are hoping to give poll workers a \$15 raise (to \$71 per day). Currently, Tennessee state statute requires poll workers to receive at least a mere \$15 for their service. In general elections, New York's polls are open for 15 hours, from 6:00 a.m. to 9:00 p.m. In primary elections, eight of the state's 60 counties keep polls open for the same 15 hours, while the other 52 keep their polls open from noon to 9:00 p.m. There is a proposal in New York to increase poll worker pay to \$130 and \$200 per day, with the latter figure for supervisors.<sup>128</sup>

The work schedule also presents a disincentive to serve as a poll worker. People who might be available to serve before or after their normal work shifts are not able to serve for an entire day. Given the opportunity, they might be inclined to work an additional seven or eight hour shift.

Fatigue is also a factor at the end of a 12 or 14 hour work day, when poll workers have to be most alert. Inevitably, long lines form at the end of the day when people are returning from work and trying to vote before the polls close. It is then that long lines form, voters get restless and tensions flare. Having tired poll workers is not conducive to assuring that the appropriate procedures are followed and that all voters are given fair treatment.



We thus suggest that work days be divided into two shifts – a poll opening shift and a poll closing shift – instead of one. This would keep poll workers relatively fresh throughout the day. Of course, this solution only works if we have a sufficient number of poll workers. As it stands now, with a single shift being the norm, election officials are barely able to staff their precincts. However, we believe that a system of two shifts will actually increase the pool of potential workers because more people will find it attractive to serve. In addition, if the steps we recommend in this section are taken, the number of poll workers will increase.

### **Poll Worker Training**

Poll worker competence is one of the greatest factors affecting voter disenfranchisement. Poll workers are the lynchpin of our election system. Regardless of what type of voting equipment is used, how much voters are educated, or how much we improve our system of registration and recordkeeping, none of it matters if poll workers do not properly implement our system.

Most jurisdictions provide some form of training for poll workers. Some jurisdictions provide only written materials and/or videotapes, and many others provide training classes. Where training sessions are held, attendance is not always mandatory. Some require attendance as a prerequisite to working the polls, but with the shortage of poll workers as prevalent as it is, many localities find ways to work with those willing to show up on Election Day. Thus, it is quite common for poll workers to either get very brief instructions right before they begin assisting voters or rely on previous experience. The result is a high likelihood that errors will occur in the polling place on Election Day.

In order to reduce the chance of polling place errors, we believe that all poll workers should be required to attend training courses prior to serving, and receive certification that they have taken the course. For those poll workers who serve regularly, such certification should be required every two years, rather than every election. Jurisdictions may offer such courses by internet, so long as assurances are taken that the course has been completed.

Poll workers also should be compensated for the time they spend receiving training. Some states, like Pennsylvania, offer a small compensation of \$5.00 for those attending training sessions. Other states give workers as much as \$50 for attending. Workers should receive adequate compensation for attending training courses, either as part of their total pay or as a separate payment.

We leave it to local jurisdictions to develop the curriculum for these courses in conjunction with the proposed election oversight authority, but suggest they include the following subjects: understanding precinct rosters; setting up and closing down the polling place; understanding how voting equipment works; provisional balloting; ballot security; and voter sensitivity training. The latter issue is particularly important. Poll workers must be made to understand that they are there to serve the voters. Although they may come from different backgrounds, speak different languages, and operate at different speeds, the poll worker's duty is to make sure that each and every voter is treated with respect.

We know that efforts like these are costly. That is why we have recommended that the federal government designate a portion of its annual funding to assist jurisdictions with poll worker training and pay increases. The proposed federal agency must work with the states to allocate these funds appropriately.

### **Professional Poll Workers**

In addition to all of the steps mentioned above, we favor another approach that would place a “professional poll worker” in each polling place on Election Day. These “professionals” would be paid county or city employees who assume the responsibility of serving as a polling place supervisor on Election Day. We envision these public employees coming from all sectors of local government—from nurses to city planners to lifeguards. These employees would be designated by their department heads as Election Day supervisors. They would receive their normal pay to work on Election Day; but unlike other poll workers, they would receive overtime pay as part of their normal compensation scale. As part of their responsibilities, poll workers would be required to attend training classes and receive regular updates from election officials. They would receive polling place materials directly from election officials and be responsible for opening the polling place on Election Day. This would help ensure that all materials are available and that polling places open on time. This person would supervise the other temporary poll workers, assist voters with problems, and communicate directly with election officials.

Having a knowledgeable person who is vested in the system present at the polling place would substantially reduce problems caused by poll worker error. Polling places would open on time, and voters in line at closing time would not get turned away. Precinct rosters would not be left on someone’s kitchen table, and polling places would not run out of ballots.

### **Recommendations**

1. The federal government should work with states to allocate a portion of the annual federal funding for poll worker training and pay increases. States should meet this federal commitment with increased funding in these areas.
2. Training should be mandatory at least every two years for all poll workers. Compensation for attending mandatory training sessions should be adequate, and training courses should be offered on more than one occasion and via the internet to allow everyone to attend.
3. Congress should enact legislation giving federal employees Election Day off without loss of pay or vacation time to serve as poll workers. States and localities should consider adopting similar programs for state, county and city employees. State and local governments are also encouraged to work with local businesses and labor to develop a poll worker program for private sector employees.
4. States and localities should develop programs for recruiting high school and college students as poll workers, offering them extra credit or even making service a requirement.

In addition, state laws pertaining to age and residency requirements for poll workers should be removed so as to further open the field of poll workers.

5. Each polling place should have a “professional” poll worker on Election Day. This person would be a full-time county or city employee who receives leave from his or her job each Election Day to serve as supervisor of a polling place. This person would be responsible for opening and closing the polling place, assisting voters with Election Day problems, and communicating with election officials at a central location to resolve any registration or polling place issues.
6. Poll worker compensation should be increased. Additionally, poll workers should work in two seven to eight hour shifts, rather than one 12-15 hour shift.

## Voter Intimidation

*“In Somerset, Texas - and I’m not saying this happens all the time, but it did strike me - folks dressed up in Klan outfits came to the polls in Somerset, walked in, stood around, let everybody know that they were there.”*

- Nina Perales, San Antonio Hearing

In theory, anyone eligible to vote should simply be able to go to the polls on Election Day, have their eligibility predetermined, and cast a ballot. Unfortunately, even today, over thirty-five years after civil rights activists marched from Selma to Montgomery for the right to vote, this doesn’t always happen. In some areas, voters are still treated differently because of the color of their skin or the language they speak.

The November 2000 election shed light on many unacceptable practices in our electoral system, one of the most serious being voter intimidation. From police checkpoints to asking for numerous forms of identification at the polling place, reports suggest that significant efforts were made to dissuade certain voters from casting their ballots as they made their way to the polls, while they waited in line, and even as they were casting their ballots in the voting booth.

Despite numerous Constitutional amendments and laws to prevent these actions from occurring, the practice still exists. Government has a responsibility to ensure that these practices do not occur and must begin to take this responsibility seriously.

### Voting Rights Laws

Throughout our nation’s history, the right to vote has been extended to more and more Americans. The 14<sup>th</sup> Amendment to the Constitution ensures citizens “equal protection of the laws.” The 15<sup>th</sup> Amendment states that the right of citizens “to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” The 19<sup>th</sup> Amendment extended voting rights to women, and the 26<sup>th</sup> Amendment extended them to citizens over 18.

Out of the Civil Rights battles of the 1960s came the Voting Rights Act of 1965 (VRA), the most comprehensive action the federal government has taken to protect the voting rights of American citizens. Written initially to safeguard the rights of African Americans who faced literacy tests, poll taxes and intimidation at polling places, the Act is now looked upon for the protection of voting rights for all citizens.

Under the Act, no person acting under color of law shall apply any “standard, practice, or procedure” in determining whether any individual has the right to vote that is different from the standards, practices, or procedures applied to other individuals within the same jurisdiction.<sup>129</sup>

Further, “[n]o person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person’s vote.”<sup>130</sup>

The VRA also specifically prohibits intimidation:

“No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any persons to vote or attempt to vote . . . .”<sup>131</sup>

Enforcement of the VRA falls to the United States Justice Department Civil Rights Division’s Voting Section. Under the Act, the Justice Department has the authority to undertake a federal inquiry, request the presence of federal observers to ensure that all registered voters are allowed to vote, and institute civil actions to prevent such conduct from occurring and to order that certain voters be permitted to cast their ballots.<sup>132</sup>

Up until now, the federal government has been lax in its responsibility to uphold the VRA. With the knowledge we have gained from last fall’s presidential election, the federal government should not hesitate to utilize the enforcement mechanisms provided for in the VRA, even if it means locking horns with state and local agencies.

### **Instances of Intimidation**

The presence of police officers or uniformed personnel in the electoral process can be extremely intimidating to certain voters. Yet this did not stop Florida’s Highway Patrol troopers from conducting unauthorized vehicle checkpoints on Election Day last November near a polling place in a heavily African American community. The U.S. Commission on Civil Rights, which conducted extensive public hearings and received over 30 hours of testimony, heard testimony from several witnesses who saw police officers, in uniform and plain-clothed, at or near a number of Florida polling places on Election Day.

In San Antonio, Gary Bledsoe, President of the Texas NAACP, testified that he was alerted to several intimidating practices on Election Day which resulted in voters either not voting or doing so with trepidation. He testified that, among other things, some polling places had surveillance cameras that focused on voters both inside the precinct and waiting in line; black voters were told they were in the wrong polling place and sent around town to find their precinct; and young voters were told at the polls that if they had traffic tickets or were involved in the criminal justice system, they were not allowed to vote.

Dr. Henry Flores of the William C. Velasquez Institute noted that there were reports in South Texas of people dressing up in INS uniforms to scare off Latino voters.

Requests for voter identification may also result in voter intimidation. We discuss that issue separately in the next section of this report.

Finally, we reiterate that our recommendations for provisional voting procedures elsewhere in this report would eliminate some of these issues. If a voter feels he or she is being harassed, the voter may cast a provisional ballot and have his or her eligibility determined later by election officials, rather than by untrained or racially-motivated poll workers.

### **Recommendations**

1. The Department of Justice must be more active in ferreting out violations of the VRA and enforcing its terms. The Department should allocate the resources necessary to respond to voter complaints and should not be reluctant to place observers in jurisdictions where complaints have been received to ensure that voters are able to exercise their right to vote.
2. State and local election officials should be diligent about responding to voter reports about intimidation at the polls and complaints about abusive or incompetent poll workers. Poll workers who are reported for intimidating or discriminating against voters, should be investigated immediately and removed from the polling places if these allegations prove to be true. While we do not want to unfairly punish poll workers who are trying their best, the denial of a single citizen's right to vote by reason of intimidation or discrimination is sufficient to warrant preventive measures.
3. Finally, common sense should dictate Election Day policies – police check points should be prohibited on Election Day and uniformed personnel should not be allowed to linger at the polling place unless they are voting.

## Voter Identification

*“I did not bring my I.D. with me, and she insisted on seeing it before she would give me a ballot. I told her I believe there’s no such rule that I have to show my I.D. Can you show me where in the handbook it says that? I stayed there until she got a call from the Board of Elections. And then she gave me a ballot.”*

- Sanloun O, Chicago Hearing

Poll workers have a great deal of discretion when it comes to disenfranchising voters. Never is this more evident than when poll workers request identification from voters. In some instances, voters are asked to provide multiple forms of identification before being allowed to vote and, in others, they are simply refused permission to vote. This may be the result of intentional intimidation, or it may simply arise from poll worker incompetence.

State laws differ widely on the type of verification needed to vote. Thirty-eight states require voter signatures at the polls, but only 19 of those states require some form of signature verification prior to a voter casting a ballot. Signatures are verified against voter registration records.

Only 14 states require that some form of identification be shown at the polls, ranging from a photo identification to a utility bill. Another eight states leave this decision up to localities.

Courts have upheld the right of states to request identification as a prerequisite to voting as a means of preventing voter fraud. Whether a state’s identification requirement is permissible, however, depends on the form of identification required and the way that requirement is applied.

We support a jurisdiction’s right to require voter identification at the polls. However, we believe that any form of identification required must be readily available to all voters so as not to create any barrier to voting. Moreover, these requirements must be applied equally in conformance with the VRA, and must not be used to intimidate certain voters.

At our hearings, several minority witnesses came forth and shared stories about being asked by poll workers for identification while white voters were not. The VRA prohibits poll workers from applying any standard, practice or procedure to a voter that is different from the standards, practices or procedures applied to other eligible voters in the same jurisdiction.<sup>133</sup>

New citizens find requests for identification particularly intimidating. Many fear that their citizenship is being questioned or that their status may be jeopardized by problems encountered at the polling place. The VRA prohibits acts of intimidation, threats or coercion at the polling place for the purpose of interfering with an individual’s right to vote. The federal government, in conjunction with state and local law enforcement agencies, must ensure that the safeguards provided by the VRA are enforced.

An even larger problem exists when poll workers in states that do not require any form of identification nonetheless ask voters for identification. These acts of intimidation usually happen to minority voters. There have been a number of reported incidents involving partisan poll workers who requested identification to ward off unwanted voters.

In St. Louis, the ACLU filed a lawsuit on behalf of minority voters stating, among other things, that voters in the November 2000 election were asked to present identification even though Missouri's law has no identification requirement. In addition, the suit states that signs and literature designed to intimidate minority voters were placed in polling places suggesting that voters were required to present identification.

In order to reduce the chances of intimidation or abuse, we believe that certain standards should be developed for those jurisdictions which choose to require identification as a prerequisite to voting. First, states and local jurisdictions should not be permitted to require more than one form of identification from voters. Second, voters must be made aware of the acceptable forms of identification in advance of the election. Third, any identification required must be readily available to all voters. For those jurisdictions requiring photo identification, voters must be permitted to provide forms of identification other than driver's licenses and passports, as these may not be available to all voters. Fourth, voters should not be required to provide social security cards or social security numbers at the polls to vote. States may list social security cards among the forms of identification that are accepted, but may not require voters to use that form of identification.

### **Recommendations**

1. Federal, state and local prosecutorial agencies must ensure that election officials and poll workers apply voter identification requirements equally in conformance with the Voting Rights Act (VRA), and that the safeguards provided by the VRA are enforced.
2. States which require identification as a prerequisite to voting may determine what forms of identification will be accepted. However, certain standards should apply: first, states and local jurisdictions may not require more than one form of identification from voters; second, states and local jurisdictions must advise voters in advance of the election as to which forms of identification are acceptable; third, the identification required must be readily available to all voters – driver's licenses and passports may not be the only two forms of photo identification that are accepted; fourth, social security cards should not be required, although they may be one of many forms of acceptable identification.



## Ballot and Voting Equipment Design

*“I’m a college graduate, a former school teacher, and I have been voting for over 30 years. I resent the implication that voters whose votes weren’t counted were not intelligent and should know better. I punched the ballot and prayed that I did it right. At no time did anyone ever tell me to hold that card up and look at it to see if all the holes were punched cleanly.”*

- Mary Maglicic, Cleveland Hearing

Until the focus on Palm Beach’s butterfly ballot in last November’s election, hardly any attention had been given to ballot design. However, since that time, many experts have come forth to address flaws in the designs of punch card ballots and other types of ballots and voting equipment. As changes are implemented in election systems throughout the country, the usability of each system must be thoroughly researched and tested in order to ensure that voters of all levels of education, sophistication and physical ability are able to understand the ballot and utilize the voting equipment.

While it is easy to lay the blame on voters who are unable to read a ballot, confused about which hole to punch, or forced to work within time restrictions, the reality is that design flaws in ballots and voting technology can lead to uncertainty, even among the most educated voters. Another ballot flaw which comes into play with longer ballots is voter fatigue. Punch cards are not the only voting system which has raised design issues – some lever machines put referendum questions to voters a foot above the eye level of the average voter,<sup>134</sup> and optical scan ballots can be equally confusing if they are crowded with a high number of referenda or down-ballot races.

The CalTech/MIT report states that “ballot design is a problem with all equipment and lever machines in particular.”<sup>135</sup> The researchers note that electronic voting machines can be oversensitive to the touch and, thus, voters can skip pages accidentally. The report also blames user interface oversights for spoiled ballots with punch card and optical scan systems. We rely on these finding to stress the importance of incorporating usability testing into any endorsement of new voting equipment.

### Usability Testing

Usability testing has blossomed over the past two decades. It is part of the design process for airplane cockpits, nuclear power plants and web sites.<sup>136</sup> A typical usability test includes a small group of people who test a product and report problems, from how straightforward the directions are to how difficult it is physically to operate an object.<sup>137</sup> By working with the test group, designers discover problems early on and alter the document or equipment based on the input of the testers.

All voting systems can be improved if problems are identified and remedied in the design phase. Members of the usability and ergonomics professions have expressed this belief for years, but never so vocally as after the November elections.

Usability testing strives to discover thought processes, movement and actions when a voter is using a voting system or ballot. By using a prototype and noting problems, technical writers and designers can create systems and ballots that are easy to follow and guarantee a more accurate vote.<sup>138</sup> Usability experts stress that not enough attention is given to font size, font type, text versus background color, the light level where the voting occurs, and the overall layout of the ballot.<sup>139</sup> They argue that most problems voters encounter when working with a ballot would be avoided if more attention were given to these areas. Also, usability testing would better inform election officials and manufacturers of voting equipment of the practical realities facing voters as they attempt to manipulate voting equipment.

### **Ballot Design**

Ballot design can be a significant factor in systems where the voter directly interacts with an actual ballot, such as paper ballots, punch cards and optical scan ballots.

The punch card system, the most widely used voting system, has received substantial attention from usability experts. The ballot book and the punch card together present many design issues. The butterfly ballot, which places candidates running for the same office across from each other with the corresponding punch positions down the middle, represents a fairly obvious problem. But design issues also result when instructions are not written clearly and the ballot is overcrowded. During the November 2000 election, Cook County, Illinois, used a ballot that contained 456 punch holes squeezed into a space intended for 312, which contributed to the state of Illinois having the highest residual vote rate in the nation for the 2000 presidential election, surpassing even Florida.<sup>140</sup>

At our Chicago hearing, Bob Zeni, who led a group of graphic artists hired to redesign Cook County's ballot following the November election, described his group's efforts. They simplified the instruction booklet using plain words that were understandable to all voters, and reduced the overcrowding on the ballot.<sup>141</sup> Were these simple measures taken prior to the election, many of the problems could have been avoided.

### **Voting Equipment Design**

Interaction with voting machinery is another important factor that has not been addressed satisfactorily in the past. With the punch card system, a voter uses a stylus to punch the card and record a vote. The shape of the stylus itself may pose problems for some voters. Further, if the voter does not hold the stylus correctly or exert enough pressure, the chad may not fully disengage from the ballot, resulting in an undervote. This is a particular issue with elderly and disabled voters, but also with members of the general public who may not know how to operate this equipment. Many voters do not know how to slip the punch card ballot into the mechanism. In the last election, there was evidence that many voters in Miami laid their punch card ballots on top of the ballot book to vote, rather than slipping the ballot into the mechanism over the prongs. This led to hundreds of undervotes in the presidential race.<sup>142</sup>

With some lever machines, shorter voters may not be able to read the names of candidates and initiatives when they are positioned at the top of the machines. This machinery is also difficult for disabled and elderly voters to maneuver, as they may be unable to see the information or might correlate it with the wrong levers. Additionally, they may not have the physical strength to flip a handle to record the votes.

Electronic voting systems vary in the type of instructions that are given - some have instructions that are less clear than others. Moreover, people who are not used to working with computers, including the elderly and less-educated, may find it difficult to navigate the screens. Testing would help alleviate these problems.

### **Recommendation**

1. Usability testers and other professionals should be employed in conjunction with the layout and design of ballots, the drafting of instructional materials, and the design of voting equipment.



# **Reporting Election Results**



## Impartial Election Officials

*“In a Tallahassee ‘war room’ within the offices of Ms. [Katherine] Harris, veteran Republican political consultants helped shape the post-election instructions to county canvassing boards... ‘Katherine’s job,’ said Mr. Stipanovich, the Republican consultant advising Ms. Harris, ‘was to bring this election in for a landing.’ ”*

*- New York Times, “How Bush Took Florida,” July 15, 2001*

Thousands of elections officials throughout America are either elected or appointed to their positions. Their roles require impartiality, yet impartiality is not always achieved. Election officials are often deeply entrenched in local politics, and have debts to political parties or individual candidates which may present conflicts or the appearance of conflicts in their capacities as election administrators.

As we saw in the November 2000 elections, election officials are not just called upon to oversee Election Day operations; they are often called upon to make rulings regarding the counting of votes or the qualifications of a candidate. Because of this, election officials must appear to be impartial, even where they are elected or appointed on a partisan basis. This is true from the top election officials in the state on down to employees in the offices of local election officials. Otherwise, voters will lose confidence in the system and question the outcome of the results.

Forty-nine of the nation’s 50 top statewide election officials are publicly aligned with a political party. While some states require local election officials to be nonpartisan, most do not. In many cases, clerks and registrars run for office on party tickets, with party backing and financing, even though those officials may be called upon to issue rulings in connection with candidates who share their party affiliations.

The need for impartiality was never more evident than in the 2000 presidential election. Katherine Harris, Florida’s Secretary of State, not only served as the top election official in the state, she also co-chaired George W. Bush’s Florida campaign. Because of her strong Republican Party ties and her perceived partiality, Ms. Harris faced strong criticism for her actions during the Florida recount. Recent reports even accused Ms. Harris of misusing public resources to further her Party’s efforts in that State. These perceptions, true or not, jeopardize the public trust in our election system, and reflect poorly on the system as a whole. They should be avoided at all cost if we are to build trust in our system of conducting elections.

While it is impossible to eliminate an individual’s personal preferences, electing or appointing election officials on a nonpartisan basis at least conveys a message of impartiality. In addition, a system that provides bipartisan checks and balances contributes to the fair and equal administration of election laws. North Carolina, for example, has a statutory quasijudicial board that is vested with the authority to order a new election. By statute, three of the board’s five members are selected from the Governor’s party, and the other two members are selected from the other major political party. In order to avoid partisan decisions, at least four of the five board members must vote in favor of

a new election. These steps create an atmosphere of impartiality and help restore confidence in the system.

### **Recommendations**

1. States and localities must recognize the importance of maintaining fairness and impartiality in the election system. To that end, state and local election officials should be selected on a nonpartisan basis or in a way that ensures bipartisan checks and balances.
2. State and local election officials should be forbidden from publicly supporting or campaigning for candidates for public office.



## Counting the Votes

*“We have to make elections work. Too many Americans have given their lives in civil rights, in voting rights in order to back up on this promise. We need to make sure that every vote cast is properly and accurately counted so that people will be willing to participate in our elections in the future.”*

- House Minority Leader Dick Gephardt, Philadelphia Hearing

Most states provide for an orderly review of the ballots before official certification of the election results takes place. In order to ensure accurate results, election officials undertake a lengthy process to count ballots and reconcile records long after an election is over. This is particularly true in large jurisdictions, which may have to process substantial numbers of absentee and provisional ballots following an election.

The events in Florida last November created the impression that our system is ill-equipped to handle a close election. In fact, close elections happen all the time, and recounts are routinely conducted to make certain that all ballots have been properly counted. In most instances, these proceedings are handled in a very orderly fashion.

Unfortunately, Florida law did not provide a consistent statewide system for tabulating the votes and certifying the results. The partisan rulings of Florida’s top election official further exacerbated the problem. What happened in Florida would not have happened in many other states because they provide for consistent vote canvassing procedures and orderly recount procedures, as well as a longer certification period.

### Standards for Counting Votes

One reason for the gamesmanship in Florida was the absence of consistent statewide procedures for counting and recounting ballots. Florida followed an “intent of the voter” standard, which is employed in a majority of jurisdictions and requires a vote to be counted if the voter’s intentions can be ascertained by looking at the ballot.

Some states have tried to establish “objective” rules to define what constitutes a recordable vote. For example, a state may provide that a punch card ballot will not count as a vote unless the chad is detached on at least two corners. The hope is to eliminate the application of human judgement. The lack of an objective standard in Florida created a perception that the manual recount of ballots was arbitrary and subjective. In the end, objectivity in the manual counting of votes is a futile goal because human judgement is always required.

All systems which create an individual ballot inherently raise questions as to whether a particular configuration is or is not a “vote.” Such systems include the traditional paper ballots, punch card ballots, connect the arrow ballots, or optical scan ballots, all of which the voter must alter in any manner to create a vote. Lever systems and DRE machines do not create an individual ballot;

therefore, there is no particular mark available to review.

Some states print instruction manuals to provide examples of what constitutes a “valid” vote, while others merely require “voter intent.” Regardless of what rules are established, human judgement will be called upon to determine the validity of votes. Thus, it is important that the decision-maker be as consistent as possible. Ultimately, in a tight race, consistency may be more important than making the “right” decision.

Therefore, while not dictating a result, we support an approach that combines elements of both the “intent” and “objective” standards. Because people have different ways of expressing themselves, we embrace the notion of voter intent. At the same time, we support guidelines that ensure a consistent result and give the public assurance that the process is being conducted fairly.

### **Official Vote Certification**

The official certification of the results occurs when all the votes have been counted and the accuracy of the vote has been confirmed. States should provide a satisfactory period of time to allow for an orderly review of the ballots before certification of the election results takes place. In Florida, the Secretary of State rushed to certify the vote total before all the votes were processed and before some overseas ballots were even received. This contributed to the chaos that ensued, and the lack of public confidence in the results. An appropriate vote canvassing process should also include manual tabulation of a random sample of the ballots to ensure the integrity of the election night vote totals. Many states currently require this prior to certification of the vote totals.

The National Commission on Election Reform recently proposed a minimum 14 day period for completing the vote counting process, followed by a period of at least 7 days to conduct a recount. Under this proposal, certification would come after the completion of the recount.

We support any approach that allows for a complete and orderly review of all ballots prior to certification. This should include a manual check of a random sample of precincts within each county to verify that the vote tabulation machines were operating correctly on election night. Along the lines suggested by the National Commission, we support a minimum 14 day period for completing the tabulation of votes in presidential elections. Since other elections are not constrained by the statutory deadline for the appointment of presidential electors, the tabulation period may be longer for other types of elections. We would prefer that certification take place after the tabulation is completed, but before a recount is requested. The certification date would provide a firm date for triggering recount requests.

### **Recounts**

Recounts provide an important procedure for ensuring the integrity of the vote counting process. Literally thousands of manual recounts involving multiple districts, punch card ballots and a simple voter intent criterium have been conducted. Frankly, it is a process usually noted for its predictable boredom, rather than the legal maneuvering we witnessed in Florida.

States have adopted a wide range of procedures for initiating a recount. Some jurisdictions automatically conduct recounts if the margin is extremely close (usually less than .5%). In most jurisdictions, candidates themselves must request a recount, and in others, any voter may request a recount. Usually, this right to a recount is automatic, and is not subject to the discretion of election officials. However, in those circumstances, the party requesting the recount may be forced to pay for it. In California, the money is refunded to the person requesting the recount if the outcome of the election changes as a result of the recount.

The time frame for requesting a recount also varies from state to state. At one end of the spectrum, Oklahoma permits the initiation of a recount to occur on election night. At the other end of the spectrum, Oregon allows a request for a recount anytime within 35 days of the election. Many states, including California, Georgia and Ohio, require a request for a recount to be filed within five days after certification of the election results. Pennsylvania requires a request to be made five days after the completion of the count, as they do not certify results until all recounts have been conducted.

In November 2000, Florida required a recount to be requested within 72 hours of the election. Such requests were not automatically granted, as was evidenced by the back and forth decision-making of the Miami-Dade County Canvassing Board. Florida enacted some changes to its laws this year, but still does not provide for a recount upon request in all instances.

Regardless of who wins, a properly conducted recount serves three “good government” goals:

1. Provides the greatest accuracy of count possible.
2. Provides an audit of the election process.
3. Tests and corrects the system, thus ensuring accurate future elections.

First, accuracy of count. Election night counting results are always crude. As we have learned, counting machines vary according to age, programming and condition of ballots. In addition, election night totals do not reflect potentially tens of thousands of absentee and provisional ballots that remain to be processed. Inadvertent error can occur in recording the initial results, resulting in overlooked stacks of ballots or double counted ballots. Recounts identify these discrepancies.

Second, the hallmark of a proper recount is transparency of the election process and the balancing of the books. A recount provides an audit to make sure that the number of voters listed in the polling book matches the number of ballots found, and the number of opened absentee envelopes matches the number of absentee ballots counted.

Third, recounts help ensure that future elections will run smoothly. Recounts act as tune ups. They identify and correct problem areas, sharpen procedures, and keep everyone on their toes. In the long run, this may be the most valuable consequence of the recount process.

In most recounts, time is not a factor. States with appropriate vote counting procedures provide a reasonable period for certification followed by a statutory period for a recount request. Usually,

there is no tactical advantage to be gained by stalling or frustrating the recount process because it continues as long as necessary to achieve the desired result.

We do not propose a model system for conducting recounts. We state only that recounts should be requested within a specific period after certification takes place, thus allowing sufficient time for the orderly conduct of the vote canvass. Because recounts serve valuable functions in our election process, automatic machine recounts should occur when the vote differential is small. Further, the right to a manual recount should be automatic as long as the party requesting the recount is willing to pay for it.

### **Recommendations**

1. Vote counting procedures should respect the intent of the voter. At the same time, we support guidelines that ensure a consistent result and give the public assurance that the vote tabulation process is being conducted in a fair and impartial manner.
2. States should adopt election result certification deadlines that allow for a complete and orderly review of all ballots, including a mandatory manual check of a random sample of precincts within each county to verify that the vote tabulation machines were operating correctly on election night. We support a minimum 14 day period for completing this process in presidential elections.
3. The deadline for requesting recounts should not begin until after certification takes place. States should conduct automatic machine recounts if the election night vote differential is less than an amount to be determined by each state based on voting patterns and voting equipment. Further, the right to a manual recount should be automatic if timely requested and if the requestor pays for it.

## The Role of the Media in Elections

*“CBS News acknowledges the serious mistakes made by the network news department on Election Night. The erroneous calls in Florida were highly embarrassing and, more importantly, damaging to the news division’s most important asset: its credibility with its viewers, listeners, and Internet users.”*

- CBS President Andrew Heyward, Testimony before  
the House Committee on Energy and Commerce

The impact of network election coverage has serious consequences for our democracy. In the 1980 presidential election, the networks declared Ronald Reagan the victor at 8:15 p.m. Eastern. Jimmy Carter conceded at 9:15 p.m. Eastern, almost an hour before the polls closed in the Mountain Time Zone and almost two hours before the polls closed in the Pacific Time Zone. This is widely known to have depressed the vote in these time zones, and to have affected the outcome of other races on the ticket. According to the National Commission on Federal Election Reform’s report, estimated turnout in 1980 was 12% lower among people who had heard the projections as compared with those who had not heard them.<sup>143</sup>

The November 2000 election showed just how much the media can impact an election. After initially calling the state of Florida for Gore prior to the closing of all polls in the state, the networks reversed themselves and put Florida in the “too close to call” column. It remained there until 2:17 a.m., when the state was moved to the Bush column until 4:00 a.m. when it again became “too close to call.” The effects of this seesaw evening were felt around the nation for weeks to come.

Networks receive their election night information from Voter News Service (VNS). The errors in calling the 2000 election were blamed on faulty exit polling procedures employed by VNS, and the networks have proposed recommendations to fix the service. The networks also support a uniform poll closing time, so that network projections will not unfairly influence voters in particular states or regions of the country.

Rather than call for a uniform poll closing to accommodate television networks, we would prefer to see the networks take responsibility for themselves. The television networks should be seeking to accommodate the millions of Americans who are exercising their right to vote rather than the other way around. Considering how little attention the networks pay to politics and political discourse (unless a scandal develops), it is ironic that the networks so steadfastly protect their right to call the election first.

The First Amendment is the media’s strongest ally in the debate over how to contain election predictions. But, as pointed out by the National Commission on Federal Election Reform in its recent report, there is room for Congress and the states to act together to curb predictions.

## **Voter News Service**

VNS was created in 1993. ABC News, NBC News, CBS News, FOX News, The Associated Press and CNN comprise VNS and provide its funding. VNS shares all predictions with all its members; thus, the perceived “race” to call an election first is nothing of the sort. They all get the same information at the same time.

VNS bases its preliminary predictions on two sources of data: exit polls and actual vote results from sample precincts. Exit polls are conducted in randomly selected sample precincts, which together offer a representative sample of the state. Vote results are also taken from sample precincts throughout election night. These two sources of data allow VNS to generalize about the state and entire nation.

There are no uniform requirements on how states, counties and municipalities release unofficial results. Generally, information is compiled at a central tallying center and then released intermittently throughout the evening.

VNS’s materials state their policy on calling Presidential elections: “In a Presidential election, the national projection is not made until one candidate has been projected in enough of the individual states to have a majority of electoral votes.”<sup>144</sup> Ted Savaglio, Executive Director of VNS, in testimony before the House Committee on Energy and Commerce, admitted that errors were made in the 2000 election predictions. VNS has commissioned an outside consultant to study its practices and recommend improvements.

## **Uniform Poll Closing**

In most states, polls are open from 7:00 a.m. through 8:00 p.m. In national elections, with most national media outlets based on the East Coast, predictions are often made while polls are still open in other states and, sometimes, in different parts of the same state. In 1996, the networks called the election for Bill Clinton well before polls on the West Coast had closed, resulting in a large number of voters foregoing the right to vote after learning that their vote would not affect the outcome. As in the 1980 election, several candidates further down the ticket felt they lost their elections because these voters were dissuaded from going to the polls.

In Florida last year, the state was first called for Gore at 7:49 p.m. EDT, while polls in the Florida Panhandle (which sits in the Central Time Zone) were still open (they closed at 7:00 p.m. CDT).

We have several concerns with the proposal to implement a uniform poll closing time. Primarily, hours in one region of the country will have to be changed significantly. If polls in the East stay open as usual from 7:00 a.m. to 8:00 p.m., polls in the West would only stay open until 5:00 p.m. This would create an extreme hardship for voters in the West, who would not be able to vote after work or at the end of the day. Particularly in major metropolitan areas of the West, where commute times can be lengthy, it would be virtually impossible for working men and women to vote during

those hours. Even if polls were open as usual in the West and polls in the East stayed open until 11:00 p.m., voters in the East would have a substantial advantage because of the longer voting day.

We do not believe that a uniform poll closing time is the answer and we are vehemently opposed to the idea. Whether polls are closed earlier in the West or stay open longer in the East, voters in the Pacific Time Zone will be disadvantaged. We prefer an option in which networks take some responsibility for their own actions.

### **How to Curb Erroneous and Early Predictions**

Network media executives have already stated their future plans to refrain from calling a state for a candidate until all polls in that state are closed. We hope they follow through with this plan. But we do not believe that this proposal goes far enough.

We echo the recommendation of the National Commission in calling upon networks to voluntarily refrain from projecting the outcome of presidential races in any state until the polls have closed on the West Coast (8:00 p.m. Pacific Time, 11:00 p.m. Eastern Time). While this system is not perfect in that it leaves Hawaii and Alaska to fend for themselves, it presents a realistic way to deal with the problem. Waiting until 11:00 p.m. in the East represents no great hardship if it means assuring voters in the West that their votes make a difference.

There is little Congress can do to regulate the content of network newscasts in light of the First Amendment. Nor does the FCC have the ability to restrict program content in this area. Any restrictions must be made by the networks themselves.

But Congress and the states may impose restrictions on the information provided to networks on election night, as long as these restrictions do not single out the networks or infringe on the public's right to an open and transparent process for counting votes. We would prefer that the networks voluntarily agree to regulate themselves on this issue, but we believe that media projections present a sufficient threat to the franchise to warrant Congressional involvement if voluntary restraints do not succeed.

### **Recommendations**

1. Network news organizations should voluntarily refrain from making projections in presidential elections until the polls have closed in the Pacific Time Zone (8:00 p.m. Pacific, 11:00 p.m. Eastern).
2. If network news organizations refuse to act voluntarily, Congress should consider legislation in conjunction with the states prohibiting the release of election night results in federal elections to members of the media until 8:00 p.m. Pacific, 11:00 p.m. Eastern. Such restrictions may not single out the networks, but must prohibit the release of such information to anyone, as long as the public's right to an open and transparent vote counting process is protected.

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